Supreme Court, U.S.
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No. 04- 041113

IN THE

Supreme Court of the United States

JOHN SOPHOCLEUS, THERESA SOPHOCLEUS,

Petitioners,

v.

MARGIE CHAMPION TODD, PAUL BOWLIN, JIMMY BUTTS, DEJARVIS LEONARD, REESE & HOWELL, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Eleventh Circuit affirmed the district court's judgement that it lacked subject-matter jurisdiction under the Rooker-Feldman doctrine over the petitioners' 42 U.S.C. §§ 1983 and 1985 (and supplemental state claims) private taking and conspiracy claims. (Appendix A). The taking and conspiracy claims arose from the condemnation of petitioners' property to build a highway. Did the Eleventh Circuit correctly decide that the Rooker-Feldman doctrine precluded federal subject matter jurisdiction of the petitioners' claims?

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STATEMENT OF JURISDICTION

This court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The date of the denial of the Petition for Rehearing was October 20, 2004. (App. E)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 United States Code, Section 1983 and 1985

Fifth and Fourteenth Amendment to the United States Constitution

STATEMENT OF THE CASE

Respondents John and Theresa Sophocleus assert in this case that their home was taken under the eminent domain statute of the State of Alabama, Alabama Code of 1975, 18-1A-1, *et seq.* During the course of the appeal by Sophocleuses from Probate Court to Circuit Court, an eviction proceeding was had and done by the State of Alabama in Lee County District Court because the Sophocleus remained in their home while the contractor hired by the State of Alabama began clearing the land to expand

U.S. Highway 280. At the eviction hearing, brought by the State of Alabama, they testified that they needed Sophocleus removed from their home to raze it immediately for highway expansion.

The Sophocleuses vacated their home on January 19, 1999. The highway workers immediately moved into the Sophocleus home and used it for private use instead of razing the home. They lived in the home for the next [approximately] five to seven months.

The gravamen of the United State's Court of Appeals' affirming the district court's decision invoking the Rooker-Feldman doctrine is that Sophocleus collaterally raised their "private use" claim in state court through the underlying facts of the condemnation case.

The gravamen of the petitioner's position is that the only issue in the State court's condemnation case was valuation of the property and their current federal case centers on the temporary private use of the property after it was condemned, a request for damages not available in state court and trial against parties not a part of the condemnation action.

REASONS FOR GRANTING THE PETITION

The court should allow the writ and decide whether the Rooker-Feldman doctrine should be used as expansively as the Eleventh Circuit used it in citing *Goodman v. Sipos*, 259 F.3d 1327, 1333 (11th Cir. 2001) and *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996) as their authority to affirm the District Court. According to the Eleventh Circuit, the petitioners could have, but did not, "raise the instant arguments in the Alabama courts through a challenge to the

negotiated settlement in the condemnation case." The Eleventh Circuit continued by stating that this was not a case in which the petitioners had no "reasonable opportunity to raise this federal claim in state proceedings."

The petitioners do not admit that, conceivably, they might have been able to bring the federal claims before the state courts, by requesting the state judge to allow the Sophocleus, who were defendants, to add cross-claims against these new defendants.[1] The Code of Alabama, Section 18-1A-190-Section-1A-197, limits the trial to the issue of valuation.

The position of the petitioners is that Rooker-Feldman does not assert that federal claims that may be brought in either state or federal court, must be brought in state court. *County of Allegheny v. Frank Mashuda Co., et al.*, 360 U.S. 185 (1959).

The Eleventh Circuit has adopted an expansive view of the Rooker-Feldman doctrine that is contrary to County of *Allegheny v. Frank Mashuda Co., et al.*, 360 U.S. 185 (1959).

They are saying, though their opinion is unpublished,[2] that any federal claim that could also be brought

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1. However, under Ala. Code Section 18-1A-190 - Section 18-1A-197, the condemnation action is limited to the value of the property and while the section allows for appeals to the Alabama Supreme Court to test Constitutionality of the Act, the respondents are not questioning the Constitutionality of the Act in this action. In all likelihood, assuming the state judge allowed the cross-claims, the case would have been bifurcated, thus making them two cases.

2. Unpublished opinions can still be used by analogy. The Eleventh Circuit has not issued a published opinion on the issue of eminent domain and condemnation. (Appendix B, page 23a).

in state court must be done so to the exclusion of the federal court's joint subject-matter jurisdiction: ". . . Notably, Appellants (petitioners) could have, but did not, raise the instant arguments in the Alabama courts through negotiated settlement in the condemnation case." (Appendix A, page 5a).

The Rooker-Feldman doctrine under United States Supreme Court decisions[3] says:

. . . The Rooker-Feldman doctrine provides that

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3. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Col*, 263 U.S. 413 (1923). In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), the Supreme Court ruled that the District Court did not have jurisdiction to hear a collateral attack on a State Supreme Court judgment. In that case, the grounds advanced for resorting to the District Court was that the judgment rendered and affirmed in State court was in contravention of the contract clause of the Constitution of the United States (article 1, 10, cl. 1) and the due process of law and equal protection clauses of the Fourteenth Amendment (section 1), in that it gave effect to a state statute alleged to be in conflict with those clauses and did not give effect to a prior decision in the same cause by the Supreme Court of the State which is alleged to have become the law of the case. However, contrary to the position of the petitioners, the Supreme Court ruled that under the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment of a State court for errors of the character as described above. The Supreme Court went on to say that there was full jurisdiction in the State courts and that the writ before the Supreme Court was, at best, just an attempt to get rid of the judgment for the alleged errors of law committed, as alleged, in the exercise of the State's jurisdiction.

In *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), the Supreme Court again stated that the United States district courts have

(Cont'd)

> federal courts, other than the United States Supreme Court, have no authority to review final judgments of state courts. The doctrine extends not only to constitutional claims presented or adjudicated in a state court, but also to claims that are "inextricably intertwined" with a state court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." (Appendix D, page 45a).

The only issue before the state court was the issue of valuation.

The Honorable Judge Walker in her February 18th, 2003 opinion (Appendix D, page 45a) in regards to the defendants Motion to Dismiss, says:

> Most of the plaintiffs' claims are not inextricably intertwined with the state condemnation proceeding. [Counts A1A and A1B, emphasis added] in particular, do not state that the compensation paid to the plaintiffs was inadequate or that the state's condemnation process was invalid, (The plaintiff did raise a constitutional challenge to Alabama's condemnation procedure during the state proceedings (doc. #27, ex. 1., however, as the plaintiffs have not raised that challenge here, it is irrelevant) only that the

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(Cont'd)
no jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. The court emphasized that review of those decisions may be had only in the Supreme Court of the United States.

> defendants abused the process for a lengthy period before condemnation was complete (and during that time the land was not taken "for public use" at all). The judgment of the state court adopting the parties' settlement agreement (doc. 27, ex. 2) would not have to be incorrect in any way for these claims to be valid. This court has jurisdiction to hear these claims. (Appendix D, page 45a).

Judge Walker said again, in another opinion overruling another Motion to Dismiss, dated April 2, 2003, (Appendix C, page 34a): "The condemnation was concerned only with the question of how much money the State of Alabama should pay the plaintiffs for their land. That issue is not before this court. The actions of the defendants in this case were not before the state court and neither was nor should have been central (or even relevant) to the valuation of the plaintiffs' land. Unlike the plaintiffs in *Powell v. Powell*, 80 F.3d 464, 466 (11th Cir. 1996), cited by Reese, the plaintiffs here are presenting no claim that amounts to a collateral attack on the state court's judgment. They do not challenge the state's right to condemn their land, the amount they were paid, or the state's condemnation procedures and, if they prevail, the state court's judgment will be unaffected."

The Eleventh Circuit refused to adopt her line of reasoning, which was the correct line of reasoning, and instead adopted an expansive interpretation of the Rooker-Feldman doctrine, one to which this court should declare plain error.[4]

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4. The case was transferred from Judge Walker to Judge Thompson and Judge Thompson granted summary judgment and it was that decision of January 26, 2004 (Appendix B) and reasoning that the Eleventh Circuit upheld.

Thus, the petitioners' principal claim is that the defendants abused the condemnation process for a lengthy period of time before condemnation was complete and during that time period though the land was taken "for public use," it was, in fact, used for private use, as will be clarified below.[5]

What the petitioners found to be a "temporary unlawful taking," began, lawfully, at the eviction hearing held in January of 1999, when the state moved that they must be immediately removed from their home for the widening of the highway. By that time, money offered to the Sophocleuses for their home had been paid into court which allowed the condemners, under State law, to enter the property and begin work. When the Sophocleuses refused to move from their home, the State began an eviction proceeding. In the testimony at the hearing, the state witnessed that their need was imminent and necessary for the public good. Thus, eviction was ordered and respondents[6] moved out, only to

5. The Supreme Court has repeatedly stated that "one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. *Cincinnati v. Vester*, 281 U.S. 439, 447 (1930); *Thompson v. Consolidated Gas Corp.*, 300 U.S. 55, 80 (1937); *Madisonville Traction Co. v. Bernard Mining Co.*, 196 U.S. 239, 251-252 (1905). In *Missouri Pacific R. Co. v. Nebraska*, 164 U.S. 403 (1896), the "order in question was not, and was not claimed to be, . . . a taking of private property for a public use under the right of eminent domain," at 416, the Court invalidated a compensated taking of private property for lack of a justifying purpose. Only where the exercise of eminent domain power is rationally related to a conceivable public purpose, the Court has never held a compensated taking to be proscribed by the Public Use Clause.

6. While there is some controversy over why the Sophocleuses moved out when they could have appealed the eviction ruling, such is not the issue before this court.

find later the highway workers moved in and began living in their home for about five to seven months, until, to-wit: August of 1999:

> The Sophocleus allege that from January to August of 1999 they were "forced out of their home" so that the contractors, Reese & Howell, could "sleep in their house, live in it, use it as quarters, and use it as an office." They further claim that the defendants did this "for a vindictive purpose." Mr. Sophocleus and some of his acquaintances state that they drove by the house during this period and observed people watching television and playing music in the house, playing football and riding a four-wheeler in the yard, working on cars in the shop next to the house, and sitting on the stoop drinking what appeared to be beer. The Sophocleus' acquaintance Patrick Byrd observed cars parked at the Sophocleus house at night, "well after working hours," which were still there in the morning; thus, he states, people were sleeping there. The Sophocleus also allege that Reese & Howell used their house as an office; their evidence for this is that when Mr. Sophocleus entered the house with the state appraiser in August of 1999, he saw a "reconnected sewer, replaced phone jacks in the wall, drawings scattered about, milk crates on the floor placed up to those very large wooden spools that are used as a makeshift desk or table, newspaper, used fast-food wrappers, can, bottles, paper cups and other debris on the floor that I had not left in the home." (Appendix B, page 11a).

The petitioners filed their claim in federal district court alleging many things, though, the federal unlawful taking claim was the only issue to survive the various motions to dismiss. The aforesaid federal district court case was filed after a judgment had been entered by the Circuit Court of Lee County setting the valuation of the property condemned. In that judgment, the circuit court also stated that the property was condemned for public use. It is this judgment that the district court has hung its hat opining the petitioners cannot take the money and then sue for the temporary unlawful taking.

But, the first judge on the case, The Honorable Susan Walker, Magistrate, ruled that the petitioners' temporary private use issue was not subject to the Rooker-Feldman doctrine.

At the summary judgment stage, The Honorable Myron Thompson, ruled opposite. (Appendix B).[7]

He based his ruling on two facts (Appendix B, page 19a and 21a):

1. "In August 1999 (in the State condemnation case–emphasis added) they (petitioners) alleged, that the State did not have a "current need" for their property in December 1998, that the State had refused to make use of their property from January to August 1999, that the State's actions were

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7. As yet, there has been no decision by any court as whether or not the plaintiff can state that there were lawful and unlawful time periods. (Appendix B, page 25a). Ala. Code Section 18-1A-192-197 allows for any type of legal evidence to show value.

capricious, arbitrary, and done in bad faith, and that their house had not been destroyed and was still inhabitable."[8]

2. "Even if the Sophocleus' allegations (in their condemnation case–emphasis added) had not raised the issue of whether the State needed or was using their property, the issues they now raise are "inextricably intertwined" with the state court's judgment. This is so because the state trial court's judgment determined, consistent with the parties' settlement agreement, (1) that the condemnation of the Sophocleus' property was necessary and for a public use,[9] and (2) that the agreed-upon compensation was adequate."

This argument means that the Sophocleuses should not have accepted the valuation (money) for their property, even

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8. Petitioner admits that these things were alleged in the state case, for they were facts that existed along with the other facts, but they were alleged against the State of Alabama–not a party in this lawsuit–for the purpose of attacking the State's valuation of the property, not claiming 1983 damages against the individual defendants and corporate defendant.

9. The petitioners are not saying that the condemnation was not ultimately necessary for public use, ie, building a highway, what they are saying is that for a period of time, from January or February to August of 1999, highwaymen lived in their home instead of renting motels and that was not a public use. Had this been a volunitary market transaction, then the contractors' men could have done what they wished with the home. However, because this was a forced sale under the eminent domain statute, they were obliged under law, to not use the house for private use and if that meant letting it just sit there until such time as they got ready to tear it down, then, that is what the law says: it must be used for the public purpose. Telling Mr. and Mrs. Sophocleus that they have to move out to build a highway and then let the contractors move in to live, is not for the public good.

though, they were out of the house and the house was virtually destroyed, or, for sure, made unlivable by August. According to the district court (Appendix B), the only relief was to sue them, somewhere, before September of 1999. Yet, as stated above, the circuit court case was limited to the valuation of the case. The Constitutionality of the Alabama eminent domain statute was not in question. The only thing the Sophocleuses sought was to punish the State actors and private contractor for abusing the privilege of eminent domain when they used their home for living quarters. But according to the district court, when the state court entered its judgment finding a public use, that meant that the *entire* time-line was included in that state ruling, not just the judgment day. The judgment is silent as to any time-line.

As stated before, the Eleventh Circuit affirmed the district court's opinion by stating that the Sophocleuses could have brought their arguments in state court and are therefore barred from bringing them in Federal Court.

Why? The wrong was committed after the condemnation proceeding started, after they had been evicted from their home, after the probate court had decided what the value was and, ostensibly, decided that the condemnation was for public use.[10] Already the petitioners have lost their home, have no money (as all the money is in the court and tied up by the appeal to circuit court, in which, *both parties* appealed) and the district court is saying that they should file for

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10. It is highly unlikely that the probate court had jurisdiction to decide anything but valuation and yet, they were able to order the condemnation and thus, obtain the home under the eminent domain statute. All the circuit court did different from what the probate did was give the property a higher value for the Sophocleus' home.

damages in the condemnation case, which seems to have been impossible.

The district court should have exercised jurisdiction for the following reasons.

In *Thompson v. Consolidated Gas Corp.*, 300 U.S. 55, 80 (1937), the case challenged the validity of a gas proration order issued by the Railroad Commission of Texas. Suit was filed in federal court to enjoin enforcement of the order. The Supreme Court stated it had jurisdiction to determine the Constitutionality of the Texas statute, even though the defendants might, perhaps, have secured its construction by the state court. The court emphasized that this Court, many times, has held that one's property may not be taken for the benefit of another private person without a justifying public purpose, *even though compensation is paid. Hairston v. Danville and Western Ry. Co.*, 208 U.S. 598, 605, 606, 13 Ann. Cas. 1008 (1908); *Rindge Co. v. County of Los Angeles*, 262 U.S. 700, 705 (1923).

In *Cincinnati v. Vester*, 281 U.S. 439 (1930), the plaintiffs chose to file their injunction against the City of Cincinnati in federal court instead of state court.

In *County of Allegheny v. Frank Mashuda Co., et al.*, 360 U.S. 185 (1959), Allegheny County, a subdivision of the State of Pennsylvania, took action under its State law to acquire property owned by respondents which was allegedly necessary for the enlargement of its Greater Pittsburgh Airport. The respondents appeared in the state case and contested the issue of damages for the taking, but raised no objection to its validity. Both parties appealed the case to the circuit court for a trial de novo. The County entered upon

the property and began its improvement. Then the respondents filed suit in Federal Court attacking the validity of the County's taking in the state suit. The Supreme court allowed the action in Federal court to continue, even though, the validity of the taking could have been brought in the State court.

As stated above, the reasons given by the district court sound in res judicata and not Rooker-Feldman. It is clear that res judicata does not apply because there were different parties than in the current suit. The petitioners request that this court grant Certiorari and reverse the appellate court on the issue of the Rooker-Feldman doctrine.

CONCLUSION

For the foregoing reasons, petitioners request this Honorable Court accept the writ.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED AUGUST 2, 2004

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 04-10834
Non-Argument Calendar

D. C. Docket No. 00-00652-CV-T-E

JOHN SOPHOCLEUS,
THERESA SOPHOCLEUS,

Plaintiffs-Appellants,

versus

STATE OF ALABAMA DEPARTMENT OF TRANSPORTATION, REESE & HOWELL, INC., MARGIE CHAMPION TODD, individually, PAUL BOWLIN, individually, JIMMY BUTTS, individually, DEJARVIS LEONARD,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Alabama

(AUGUST 2, 2004)

Before BIRCH, DUBINA and MARCUS, Circuit Judges.

Appendix A

PER CURIAM:

Appellants, John and Theresa Sophocleus, challenge the district court's entry of summary judgment in favor of the Alabama Department of Transportation ("ALDOT"), several individually named ALDOT employees, and an ALDOT contractor (collectively, the "ALDOT Defendants"). Appellants sued the ALDOT Defendants, alleging that they had taken Appellants' home for private use from January 1999 through August 1999 without just compensation, in violation of 42 U.S.C. § 1983; 42 U.S.C. § 1985; and state laws of trespass, invasion of privacy, and outrage. On appeal, Appellants argue that the district court erred by finding that it lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine[1] based on a previous state court action.

We review the district court's order granting summary judgment *de novo. See Madray v. Publix Supermarkets, Inc.*, 208 F.3d 1290, 1296 (11th Cir. 2000). A motion for summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). We review questions of subject matter jurisdiction *de novo. See Singleton v. Apfel*, 231 F.3d 853, 856 (11th Cir. 2000).

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1. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S. Ct. 1303, 1314-15, 75 L. Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416, 44 S. Ct. 149, 150, 68 L. Ed. 362 (1923).

Appendix A

Upon thorough review of the record, as well as careful consideration of the parties' briefs, we find no reversible error and affirm.

The relevant facts are these. On May 19, 1998, in connection with the widening of a highway next to Appellants' property, ALDOT filed an application to condemn the property in Lee County (Alabama) probate court. The probate court subsequently entered an order of condemnation and appointed a commission to determine the amount of "just compensation" for the property. After numerous commission appraisals, and objections by the Appellants, a price was set but Appellants refused to move from the property.

Thereafter, ALDOT initiated eviction proceedings against the Appellants, also in Alabama state court. During the eviction proceedings, Appellants again objected to the condemnation of their home and argued that ALDOT did not need the property for the highway project it was planning. At the end of the eviction proceedings, the state court entered an order of eviction, after which Appellants moved from the property. After they had moved, they settled the still-pending condemnation proceeding and the court in that action entered an order and decree of condemnation. Appellants received the negotiated price for their property and did not challenge the resolution in a state appellate court.

Instead, Appellants filed this action, alleging that their settlement in the condemnation proceeding was unreasonable and unfair. In their federal action, they also argued that they were entitled to, but did not receive, relocation expenses.

They also contended that they had not received "just compensation" during the state-court proceedings.

Under the *Rooker-Feldman* doctrine, federal courts, other than the United States Supreme Court, have no authority to review final judgments of state courts. *See Siegel v. LePore*, 234 F.3d 1163, 1172 (11th Cir. 2000). The doctrine extends not only to constitutional claims presented or adjudicated by a state court, but also to claims that are "inextricably intertwined" with a state court judgment. *Id.* A federal claim is inextricably intertwined with a state court judgment "'if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.'" *Id.* (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S. Ct. 1519, 1533, 95 L. Ed. 2d 1 (1987)).

In this case, ALDOT condemned the Appellants' property under state eminent domain statutes and, after Appellants refused to vacate their property, initiated eviction proceedings. During the condemnation and eviction proceedings, the Alabama courts determined that the condemnation of Appellants' property was necessary for public use -- the widening of a nearby highway. The parties negotiated a settlement in the condemnation proceeding, but not before ALDOT initiated an eviction action because Appellants had not vacated their property, in spite of the condemnation notice. Notably, Appellants could have, but did not, raise the instant arguments in the Alabama courts through a challenge to the negotiated settlement in the condemnation case.

Instead, they sought to challenge the negotiated settlement of the condemnation proceeding in federal court. The district court determined that they could not do this. Based on our review of the record, the district court did not err by concluding, for *Rooker-Feldman* purposes, that this claim is inextricably intertwined with the state condemnation proceedings. As the Seventh Circuit put it in an analogous case, if Appellants meant to challenge the state condemnation proceeding as unconstitutional, "they should have done so through the Illinois condemnation process, and ultimately to the United States Supreme Court if necessary." *Garry v. Geils*, 82 F.3d 1362, 1368-69 (7th Cir. 1996).

Contrary to Appellants' argument, this is not a case involving a plaintiff who had no "reasonable opportunity to raise his federal claim in state proceedings." *Powell v. Powell*, 80 F.3 d 464, 467 (11th Cir. 1996). In such a case, the *Rooker-Feldman* doctrine does not apply. Here, the district court held that even if Appellants had not raised each of their arguments in the Alabama proceedings, they had the opportunity to do so, and thus the *Rooker-Feldman* doctrine applied. We agree and accordingly affirm the district court's dismissal of this case for lack of subject-matter jurisdiction.

AFFIRMED.

APPENDIX B — OPINION AND JUDGMENT OF THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION DATED AND FILED JANUARY 26, 2004

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

CIVIL ACTION NO. 00-T-652-E

JOHN AND THERESA SOPHOCLEUS,

Plaintiffs,

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, et al.,

Defendants.

OPINION

Plaintiffs John and Theresa Sophocleus bring this case against defendants Margie Champion Todd Hopper, Paul Bowlin, Jimmy Butts, and DeJarvis Leonard, all in their individual capacities, and Reese & Howell, Inc. The Sophocleuses allege that the individual defendants, who are employees of the Alabama Department of Transportation, took their home for private use from January 1999 through August 1999,[1] in violation of the fifth and fourteenth

1. At one point, the Sophocleuses argue that the taking for private use was from September 1998 to September 1999. Final amended complaint, filed August 4, 2003 (Doc. no. 64), at 8. At another point, (Cont'd)

amendments to the United States Constitution as enforced through 42 U.S.C.A. § 1983; that the individual defendants conspired with Reese & Howell, Inc., a contractor hired to expand Highway 280, to do this, in violation of 42 U.S.C.A. § 1985; and that Reese & Howell committed the state torts of trespass, invasion of privacy, and outrage during this period.[2] Jurisdiction is alleged under 28 U.S.C.A. §§ 1331 (federal question), 1343 (civil rights), 2201 and 2202 (declaratory judgment), and 1367(a) (supplemental jurisdiction).

This lawsuit is now before the court on defendant DeJarvis Leonard's motion to dismiss, the individual defendants' motion for summary judgment, and Reese & Howell's motion for summary judgment. For the reasons that follow, the court will dismiss this case on the grounds that this court lacks subject-matter jurisdiction over the Sophocleuses' claims under the *Rooker-Feldman* doctrine.[3]

(Cont'd)

they state it occurred from January through September 1999. *Id.* at 13. In their most recent filings, however, they identify the period in question as January through August 1999. Opposition to individual defendants' motion for summary judgment, filed Nov. 14, 2003 (Doc. no. 82), at 2; Opposition to defendant Reese & Howell's motion for summary judgment, filed Nov. 14, 2003 (Doc. no. 81), at 1.

2. Opposition to defendant Reese & Howell's motion for summary judgment, filed November 14, 2003 (Doc. no. 81), at 1-2. The Sophocleuses state their claims in slightly different terms in their final amended complaint, filed August 4, 2003 (Doc. no. 64).

3. A federal court "must always dismiss a case upon determining that it lacks subject matter jurisdiction, regardless of the stage of the proceedings." *Goodman v. Sipos*, 259 F.3d 1327, 1332 n. 6 (11th Cir. 2001).

Appendix B

I. BACKGROUND

This case arises out of the State of Alabama's condemnation of the Sophocleuses' property. In May 1998, the State filed a petition for condemnation with the Probate Court of Lee County, Alabama, seeking to condemn the Sophocleuses' land and several other tracts of land for the purposes of expanding Highway 280, a public road.[4] Pursuant to the procedures set forth by the Alabama Eminent Domain Code, 1975 Ala. Code § 18-1A-1 et seq., the probate court appointed commissioners to assess the value of the land to be condemned. The commissioners appraised the property at $85,000, and the probate court entered a "Decree of Condemnation" on August 3, 1998, awarding the Sophocleuses $85,000 for their property.[5] On August 7, the State paid $85,000 into the probate court, and the Sophocleuses received a letter demanding that they vacate their property by September 10.

The Sophocleuses refused to move, and tensions between the Sophocleuses and the State increased. Department of Transportation officials asked the Sophocleuses in person to leave their property, and employees of Reese & Howell drove "heavy earth moving machines" onto the Sophocleuses' property, destroying landscaping and causing loud noises.[6]

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4. Petition for Condemnation, exhibit 5 of Reese & Howell's exhibits, filed Oct. 20, 2003 (Doc. no. 73).

5. Decree of Condemnation, exhibit 6 of Reese & Howell's exhibits.

6. Final amended complaint, filed Aug. 4, 2003 (Doc. no. 64), at 3- 4.

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At one point someone drove a backhoe towards the Sophocleuses' house, and Mr. Sophocleus met the driver on the porch with a rifle. The backhoe driver then left.[7] Sometime before September 1, 1998, someone cut the sewer line to the Sophocleuses' house, preventing them from using their toilets.[8] On October 7, 1998, the Sophocleuses appealed the probate court's order of condemnation to the state trial court,[9] and the State of Alabama cross-appealed.[10] Under 1975 Ala. Code § 18-1A-283, any party can appeal a probate court's order of condemnation to the state trial court for a trial de novo. In 1998, during discovery in the appeal, the Sophocleuses admitted that the taking of their land was for a "public use," but also stated that the taking of their property was not "necessary" for the highway improvements.[11]

In December 1998, the State of Alabama filed a suit in state trial court seeking to evict the Sophocleuses. This was a separate action from the condemnation suit. In an affidavit filed on December 13, 1998, in the eviction case, Mr. Sophocleus stated that "officials from the Department of Transportation now intend to use my house ... for use by public transportation officials for work purposes.

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7. *Id.* at 4-5.

8. *Id.* at 4.

9. Appeal Cover Sheet, exhibit 9 of Reese & Howell's exhibits.

10. Final amended complaint, filed Aug. 4, 2003 (Doc. no. 64), at 2.

11. Sophocleuses' responses to State of Alabama's request for admission, exhibit 10 of Reese & Howell's exhibits.

Consequently, this property and the house located thereon are not currently needed for the construction of Highway 280 as the Department of Transportation has no intention of razing the house."[12]

After a trial on January 12, 1999, the state court in the eviction case issued a writ of possession evicting the Sophocleuses and granting possession of the property to the State.[13] The Sophocleuses had the right to appeal the court's decision if they paid $250 a month pending the outcome of the appeal; however, they did not do so. The Sophocleuses maintain that the reason they did not appeal is that their attorney informed them that the State's attorney said that Margie Champion Todd Hopper, a state Right-of-Way Engineer, had threatened that if the Sophocleuses did not vacate their house, and then lost their appeal, that the State or its employees "would seek damages against them for holding up construction of the highway, which could amount to a $10,000 a day fine."[14] On January 13, the State's attorney wrote a letter to the Sophocleuses' attorney confirming their agreement that "in exchange for the State agreeing to give them ... additional time [to move out], the Sophocleus[es] agree not to appeal the Judge's order of

12. Counter affidavit of John Sophocleus, exhibit 11 of Reese & Howell's exhibits.

13. Writ of possession, exhibit 12 of Reese & Howell's exhibits.

14. Final amended complaint at 6. This court has already dismissed the Sophocleuses' claim of "premature eviction by lawsuit" because the *Rooker-Feldman* doctrine deprives this federal court of jurisdiction to consider whether the defendants had the right to evict the Sophocleuses. Order, filed May 14, 2003 (Doc. no. 50), at 15.

eviction."[15] The Sophocleuses moved out of their house on January 18, 1999. Their decision not to appeal the eviction order did not affect their appeal of the probate court's condemnation order, which was still pending in the state trial court.

The Sophocleuses allege that from January to August 1999 they were "forced out of their home" so that the contractors, Reese & Howell, could "sleep in their house, live in it, use it as quarters, and use it as an office."[16] They further claim that the defendants did this "for a vindictive purpose."[17] Mr. Sophocleus and some of his acquaintances state that they drove by the house during this period and observed people watching television and playing music in the house, playing football and riding a four-wheeler in the yard, working on cars in the shop next to the house, and sitting on the stoop drinking what appeared to be beer.[18] The Sophocleuses' acquaintance Patrick Byrd observed cars parked at the Sophocleuses' house at night, "well after working hours," which were still there in the morning; thus, he states, people were sleeping there.[19] The Sophocleuses also allege that Reese & Howell used their house as an office; their evidence for this is that when Mr. Sophocleus entered the house with the state appraiser in August 1999, he saw

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15. Letter, exhibit 13 of Reese & Howell's exhibits.

16. Opposition to individual defendants' motion for summary judgment, filed Nov. 14, 2003 (Doc. no. 82), at 7-8.

17. *Id.* at 2.

18. *Id.* at 8.

19. Declaration of Patrick Byrd, exhibit 6 to plaintiffs' evidentiary submissions, filed Nov. 14, 2003 (Doc. no. 83), at 2.

"a reconnected sewer, replaced phone jacks in the wall, drawings scattered about, milk crates on the floor placed up to those very large wooden spools that are used as a makeshift desk or table, newspapers, used fast-food wrappers, cans, bottles, paper cups and other debris on the floor that I had not left in the home."[20]

On August 11, 1999, the Sophocleuses filed an "Amended Appeal" in the condemnation case in the state trial court. In this pleading, the Sophocleuses stated that they were evicted in January 1999 "under allegations to the Court that there was an immediate need for the property and that the structures thereon would be immediately destroyed," but that "[d]espite these allegations to the court, the State failed and refused, for an unreasonable period of time, to destroy the Appellants' home and/or to make use of the condemned property."[21] They further alleged that the actions of the State were "capricious, arbitrary and done in bad faith."[22] They asked the court to "set aside the decision of the Commissioners" as to the proper compensation for their land, and to award "other, further or different relief, including but not limited to punitive damages, damages for mental anguish and expenses for the second relocation, as may be just and proper."[23]

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20. Declaration of John Sophocleus, exhibit 4 to plaintiffs' evidentiary submissions.

21. Amended appeal, exhibit 15 of Reese & Howell's exhibits, filed Oct. 20, 2003 (Doc. no. 73), at 2.

22. *Id.* at 2-3.

23. *Id.* at 3. On August 11, 1999, the Sophocleuses also filed a Notice of Constitutional Challenge alleging that the Alabama Eminent

(Cont'd)

Also on August 11, the Sophocleuses filed pretrial contentions with the state trial court in which they repeated the allegations, made in their counter-affidavits in the eviction case, that in December 1998 "the State of Alabama had no current need for the condemned property and that the State intended to use the structures located on the property for storage, despite the fact that no just compensation had been paid for the same." They further alleged that since their eviction in January 1999, "their house remains intact and inhabitable."[24]

The day before the condemnation action was scheduled for a de novo trial, the parties settled the case. The Sophocleuses agreed to the condemnation and the State agreed to pay them $145,000. On September 23, 1999, the state trial court entered an order of decree and condemnation, stating:

> "The parties to this cause reached a settlement and advised this Court of the same. Thereupon, the Court proceeded to hear the allegations of the application or petition for an order of condemnation, and upon the consideration of said application and with the consent and agreement of the parties and for good cause shown, it is the opinion and judgment of the

(Cont'd)

Domain Code was unconstitutional because it does not allow for "the imposition of punitive damages based on the conduct of the condemnor; said statutes fail to provide for the award of mental anguish; and said statutes fail to provide for second or subsequent relocation expenses." Notice of constitutional challenge, exhibit 17 of Reese & Howell's exhibits.

24. Pretrial contentions, exhibit 16 of Reese & Howell's exhibits.

> Court that the allegations of said petition are true, and that it is necessary that the property described in Exhibit "A" be condemned for the uses and purposes stated in said petition and that the said application for order of condemnation should be granted."[25]

The Sophocleuses' house was destroyed sometime in November 1999.[26] The Highway 280 expansion project was completed and now occupies the land where the house used to be.[27]

On May 19, 2000, the Sophocleuses filed this federal lawsuit against the Alabama Department of Transportation, various individual defendants, and Reese & Howell. Magistrate Judge Walker, who was then handling the case by consent of the parties, dismissed all claims against the Alabama Department of Transportation, the claims against the individual defendants in their official capacities, the claims attacking the sufficiency of compensation awarded by the state court,[28] and all claims against Rhonda Ashworth

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25. Order and decree of condemnation, exhibit 18 of Reese & Howell's exhibits.

26. Opposition to defendant Reese & Howell's motion for summary judgment, filed Nov. 14, 2003 (Doc. no. 81), at 2.

27. Deposition of John Sophocleus, exhibit 1 of individual defendants' exhibits in support of motion for summary judgment, filed Oct. 27, 2003 (Doc. no. 77), at 464.

28. Order of Feb. 18, 2003 (Doc. no. 31).

and Mack Roberts.[29] The Sophocleuses amended their complaint to add DeJarvis Leonard as a defendant.[30] The individual defendants now are DeJarvis Leonard, the Fourth Division Engineer for the Alabama Department of Transportation, who managed the day-to-day operation of the Fourth Division during the time the Department took the Sophocleuses' land; Margie Champion Todd Hopper, the Fourth Division Right-of-Way Engineer, who had authority to make decisions in the Highway 280 expansion project; Paul Bowlin, the Right-of-Way Chief for the Alabama Department of Transportation; and Jimmy Butts, the Director of Transportation.[31]

II. LAW-OF-THE-CASE DOCTRINE

Reese & Howell and the individual defendants argue that this court lacks jurisdiction over the Sophocleuses' claims under the *Rooker-Feldman* doctrine.[32] The Alabama Department of Transportation and Reese & Howell made similar arguments in earlier motions to dismiss in this case,

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29. Order of Apr. 1, 2003 (Doc. no. 42).

30. Amended complaint, filed Aug. 4, 2003 (Doc. no. 64).

31. Opposition to defendant Reese & Howell's motion for summary judgment, filed Nov. 14, 2003 (Doc. no. 81), at 3-5.

32. The defendants also seek summary judgment on other grounds. However, if the *Rooker-Feldman* doctrine applies, then this court does not have jurisdiction to decide anything about the merits of the case. *Powell v. Powell*, 80 F.3d 464, 466 (11th Cir. 1996); *Garry v. Geils*, 82 F.3d 1362, 1363 (7th Cir. 1996).

but United States Magistrate Judge Susan Russ Walker denied those motions on the ground that the *Rooker-Feldman* doctrine did not bar the Sophocleuses' claims that their home was taken for private use.[33] The Sophocleuses argue that the defendants' arguments should fail because Magistrate Judge Walker already decided the issue against the defendants. Although they do not name it, the Sophocleuses are invoking the law-of-the-case doctrine.

The law-of-the-case doctrine holds that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816, 108 S.Ct. 2166, 2177 (1988) (internal citations omitted). The rule "promotes the finality and efficiency of the judicial process by protecting against the agitation of settled disputes." *Id.* (internal citations omitted). The doctrine "directs a court's discretion, it does not limit the tribunal's power." *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 1391 (1983). A court always "has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loath to do so in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice." *Christianson*, 486 U.S. at 817, 108 S.Ct. at 2178 (internal citations omitted); *see also Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1372 (11th Cir. 2003).

On the other hand, the law-of-the-case doctrine's presumption against reconsideration of already decided issues

33. Order, filed Feb. 18, 2003 (Doc. no. 31), at 8; Order, filed Apr. 2, 2003 (Doc. no. 44), at 1-2.

is weaker in the area of a court's subject-matter jurisdiction. It is the "ultimate responsibility of the federal courts .. . to reach the correct judgment under law," and nowhere is that responsibility "greater and more unflagging than in the context of subject matter jurisdiction issues, which call into question the very legitimacy of a court's adjudicatory authority." *American Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 515 (4th Cir. 2003). This is why the question of "federal subject-matter jurisdiction remains open until there is no opportunity to continue the proceeding by appeal." Wright, Miller & Cooper, *Federal Practice & Procedure* § 4478 (2d ed. 2003). Also, of course, "a district court's adherence to law of the case cannot insulate an issue from appellate review." *Christianson*, 486 U.S. at 817, 108 S.Ct. at 2178.

With these principles in mind, the court turns to the question of whether the *Rooker-Feldman* doctrine bars the Sophocleuses' claims.

III. *ROOKER-FELDMAN* DOCTRINE

The *Rooker-Feldman* doctrine, coined to reflect the holdings in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 150 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476-82, 103 S.Ct. 1303, 1311-15 (1983), "places limits on the subject matter jurisdiction of federal district courts and courts of appeal over certain matters related to previous state court litigation." *Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 2001). The *Rooker-Feldman* doctrine provides that "federal courts,

other than the United States Supreme Court, have no authority to review the final judgments of state courts." *Goodman*, 259 F.3d at 1332. The doctrine "applies not only to claims presented or adjudicated by a state court, but also to claims that are 'inextricably intertwined' with a state court's judgment." *Id.* A federal claim is inextricably intertwined with a state-court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Penzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S.Ct. 1519, 1533 (1987).[34] However, even if a claim is inextricably intertwined with the state court's judgment, the doctrine does not apply if the federal plaintiff had no "reasonable opportunity to raise his federal claim in state proceedings." *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996).

Thus, the question in this case is whether the Sophocleuses' claims that the individual defendants took their property for a private purpose, and with a vindictive motive, from January to August 1999, that these individuals conspired with Reese & Howell to do this, and that Reese & Howell committed state torts during this period, were raised or adjudicated in state court or were "inextricably intertwined" with the state court's September 1999 order of decree and

34. The different federal appellate courts interpret the *Rooker-Feldman* doctrine differently. Some hold that the doctrine is applicable only where the injury the federal plaintiff alleges is *caused by* the state court. *See, e.g., Garry v. Geils*, 82 F.3d 1362 (7th Cir. 1996). Under this standard, the Sophocleuses' claims might not be barred. However, the Eleventh Circuit has not adopted this view of the *Rooker-Feldman* doctrine. *Goodman v. Sipos*, 259 F.3d 1327, 1333 n. 7 (11th Cir. 2001).

condemnation.[35] Put another way, if the Sophocleuses' current claims succeed only to the extent that the state trial court's judgment adopting the parties' settlement agreement wrongly resolved the issues in that case, then this court does not have jurisdiction over their claims.

A. Claims Were Presented to State Court

A review of the record shows that the Sophocleuses did, in fact, raise their current claims in state court. In August 1999 they alleged that the State had not had a "current need" for their property in December 1998, that the State had refused to make use of their property from January to August 1999, that the State's actions were capricious, arbitrary, and done in bad faith, and that their house had not been destroyed and was still inhabitable.[36] Admittedly, they did not explicitly state that their property had been taken for a private purpose for the period from January to August 1999, or that there was a conspiracy to do this; nor did they seek damages for

35. As explained *supra*, there were two state-court proceedings: the condemnation case and the eviction case. However, the Sophocleuses could not have fully raised the question of whether the taking was for private use from January through August 1999, and thus that issue could not have been "inextricably intertwined" with the judgment in the eviction case, because the judgment in the eviction case was handed down in January 1999, before the factual predicate for the current claims occurred. Similarly, they could not have raised this issue in the initial probate-court proceeding in the condemnation case, since it occurred in 1998. However, they could have raised the issue in their appeal in the condemnation case; they were scheduled to have a de novo trial in the state trial court in August 1999.

36. *See supra* nn. 21-24 and accompanying text.

those alleged constitutional violations. They also did not allege that the State's contractors had committed torts during this period.

However, Eleventh Circuit decisions hold that the *Rooker-Feldman* doctrine applies even though the federal plaintiff is seeking a form of relief that would not be available in state court. *Goodman v. Sipos*, 259 F.3d 1327, 1333 (11th Cir. 2001). The focus is on the "federal claim's relationship to the issues involved in the state court proceeding, rather than on the type of relief sought by the plaintiff." *Id.* Thus, the fact that the Sophocleuses did not make any conspiracy or tort claims in state court is not controlling; what is controlling is the fact that they presented the facts underlying their "private use" claim to the state court. The conspiracy and tort claims are dependent on the private use claim; if the taking was not for a private use, then there was no conspiracy and the contractors were not committing torts by occupying the land.

Of course, the state trial court did not decide any claims in this case because the parties settled before the trial. However, a state-court-approved settlement agreement "is a judgment or decision for purposes of the *Rooker-Feldman* doctrine." *4901 Corp. v. Town of Cicero*, 220 F.3d 522, 528 n. 5 (7th Cir. 2000); *accord Gisslen v. City of Crystal*, 345 F.3d 624, 626 (8th Cir. 2003) (holding that the *Rooker-Feldman* doctrine barred a claim of constitutional violations during a condemnation proceeding where landowner settled the state condemnation claim).

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B. Federal Claims Are Inextricably Intertwined with State Court Judgment

Even if the Sophocleuses' allegations in their pleadings in the state trial court had not raised the issue of whether the State needed or was using their property, the issues they now raise are "inextricably intertwined" with the state court's judgment. This is so because the state trial court's judgment determined, consistent with the parties' settlement agreement, (1) that the condemnation of the Sophocleuses' property was necessary and for a public use, and (2) that the agreed-upon compensation was adequate. If the Sophocleuses were to prevail in this case by convincing this court that the taking of their land was for a private use from January to August 1999, and were to win damages based on that claim, that would mean that the state court was wrong in concluding (1) that the condemnation was necessary and for a public use, and (2) that the compensation the Sophocleuses received was adequate. *Gisslen v. City of Crystal*, 345 F.3d 624, 627 (8th Cir. 2003).

Other federal courts have concluded that similar claims of constitutional violations connected to state-condemnation proceedings are barred by the *Rooker-Feldman* doctrine. In a recent Eighth Circuit case, a federal plaintiff brought claims under 42 U.S.C.A. §§ 1983, 1985, and 1986 against a city and city officials for alleged constitutional violations related to the city's taking of his property in a state eminent-domain proceeding. The plaintiff alleged that the condemnation action was political retaliation against him in violation of the first and fourteenth amendments, that the city singled out his property for condemnation in violation of his equal-

protection rights, that he was inadequately compensated for his property, that the condemnation action was undertaken "hurriedly" to prevent him from pursuing his rights, and that city officials acted under color of state law to conspire to deprive him of his rights. *Gisslen*, 345 F.3d at 625-26. The federal court stated that, although the plaintiff was not asking for his property to be returned, his action was barred by *Rooker-Feldman* because the plaintiff's claims were "inextricably intertwined" with the state court's judgment. If the plaintiff were to succeed in federal court, that would necessarily mean that the state court had either wrongly decided that the taking was in the public interest, or had wrongly concluded that the plaintiff had been fairly compensated for the loss of his property. *Id.* at 627. That the plaintiff was seeking compensatory damages that were not available in state court did not change the result, because "the reality is that [the plaintiff] is asking the federal court for the same remedy requested in the state court action: just compensation." *Id.* at 628.

The Seventh Circuit also held that the *Rooker-Feldman* doctrine barred a federal challenge which claimed that the state-court condemnation of the federal plaintiffs' property was unconstitutional. There, the plaintiffs alleged that the condemnation was politically motivated. The court held that the plaintiffs' claim was "inextricably intertwined with the state court judgment and the finding that the power of eminent domain was being properly exercised." *Garry v. Geils*, 82 F.3d 1362, 1369 (7th Cir. 1996). If the plaintiffs wanted to challenge the state-condemnation action as unconstitutional, "they should have done so through the Illinois condemnation process, and ultimately to the United States Supreme court if necessary." *Id.* at 1368. The same is true of the Sophocleuses' claim.

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While the Eleventh Circuit has not addressed the *Rooker-Feldman* doctrine in a case alleging constitutional violations in a state eminent-domain proceeding, its decisions based on the doctrine are consistent with this court's decision. In *Goodman v. Sipos*, 259 F.3d 1327 (11th Cir. 2001), a mother and her son brought a federal § 1983 action against employees of the State Department of Family and Children Services, seeking damages for alleged constitutional violations that occurred in connection with a state juvenile proceeding which removed the child from his mother's custody. The federal action did not seek to prevent the enforcement of the custody order. Nonetheless, the federal court held that two of the mother's claims, namely her allegations that an affidavit the state court relied upon was false and that a state-court ex parte proceeding violated her due-process rights, and that a state caseworker violated her son's due-process rights when she threatened the plaintiff's family friend with arrest if he did not return the child to the State Department of Family and Children Services, were barred by the *Rooker-Feldman* doctrine. These contentions "str[uck] at the heart of the state court's proceedings and judgment" because the state court decided to take custody of the child away from the mother only after finding the affidavit to be credible and finding that the child should not be returned to the custody of the family friend. *Id.* at 1334. In contrast, the mother's claim that a search of her home was unconstitutional was not barred because the state court did not rely on any evidence derived from the search. *Id.* at 1333-34. Like the barred claims in *Goodman*, the Sophocleuses' claims directly implicate the correctness of the state court's judgment: if they are right that the State took their home for private use, then the state court was wrong to conclude that the condemnation was for a public use.

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In another Eleventh Circuit case, *Dale v. Moore*, 121 F.3d 624 (11th Cir. 1997), the court held that an attorney's Americans with Disabilities Act suit against the State of Florida and an official of the Florida Board of Bar Examiners challenging the Board's investigation into his disability was barred by *Rooker-Feldman* even though the attorney had been admitted to the bar. Although he did not seek the reversal of the Florida Supreme Court's decision to admit him to the bar, his challenge to the State's application of court rules on attorney admissions was "inextricably intertwined" with the state court's decision. As in *Dale*, here the Sophocleuses do not explicitly seek the reversal of the state court's decision, but their federal claims are nonetheless inextricably intertwined with that decision.

The Sophocleuses assert, and Magistrate Judge Walker agreed, that their claims are not inextricably intertwined with the state-court judgment because they are not challenging either the State of Alabama's right to condemn their land or the valuation of their property.[37] Rather, the Sophocleuses argue, they are alleging that their property was taken for private use for a period of time in which it was not needed, an unconstitutional act for which no amount of compensation can compensate. *See Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 104 S.Ct. 2321 (1984). The Sophocleuses' argument is based on the idea that the taking that occurred from January to August 1999 is separate from the taking that occurred after that date, with the former period being for a private use and the latter for public use.

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37. Order, filed Feb. 18, 2003 (Doc. no. 31), at 8; Order, filed Apr. 2, 2003 (Doc. no. 44), at 2.

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However, there is no legal authority to support the idea that the condemnation of one piece of property can be broken into two separate time periods, with one period being unconstitutional and the other constitutional. Certainly landowners can challenge the condemnation of their property as unconstitutional on the grounds that the taking is not yet necessary, or that the taking is not for public use because it will not be so used until a future date. *See* Donald M. Zupanec, Annotation, *Eminent domain: Validity of Appropriation of Property for Anticipated Future Use*, 80 A.L.R.3d 1085 (1977). In such cases, courts can hold either that the condemnation is constitutional because the ultimate purpose is a public one, or can rule that the condemnation is invalid because the land is not needed until some point in the future. *Compare Appeal of Waite*, 641 A.2d 25, 28-29 (1994) ("It has long been recognized that a condemnor may acquire land for future expansion, even if it cannot presently use the land for the purposes stated in the declaration of taking, so long as the land will be necessary in good faith for future use within a reasonable time") *and Test v. Broward County*, 616 So.2d 111, 113 (Fla. App. 1993) ("there need not be an immediate need for the property sought to be taken") *with Appeal of Octorara Area Sch. Dist.*, 556 A.2d 527, 531 (1989) ("Condemnation of an entire working farm for school buildings projected to be needed over the next 5 to 12 years . . . is beyond the eminent domain power vested in the Board"). However, courts in such cases do not split the condemnation into separate time periods and conclude that one is valid while the other is not. Therefore, the state court's judgment that the condemnation of the Sophocleuses' land was necessary and for a public purpose precludes the possibility that it was unconstitutional for a certain period of time.

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C. Opportunity to Raise in State Court

As noted above, the *Rooker-Feldman* doctrine is not applicable where the federal plaintiffs had no "reasonable opportunity" to raise their claims in state court. Of course, this inquiry is generally not relevant when, as here, the plaintiffs did actually raise their claims in state court.[38] However, even if they had not raised their claims in state court, the Sophocleuses certainly had the opportunity to do so.[39] Alabama courts, including probate courts and state trial courts in condemnation actions, can and do consider claims that a taking is for a private use. *See, e.g., Lockridge v. Adrian*, 638 So.2d 766 (Ala. 1994) (reversing probate and trial court's holdings that taking was unconstitutional because it was for

38. Since the parties settled the state-court case, the state court never addressed the Sophocleuses' allegations about the use of their property from January to August 1999. Thus, it is theoretically possible that the Sophocleuses could have made arguments that the state court would not have had the jurisdiction to address. However, as the discussion here shows, the state court would have been able to adjudicate the claim that the taking was not necessary or was not for a public purpose; and indeed it found that the taking was necessary for the stated purpose of expanding Highway 280.

39. It is immaterial that the defendants in this case were not parties to the state-court action; the Sophocleuses were still able to present their claim that their land was taken for a private use to the state court. *See Powell v. Powell*, 80 F.3d 464, 468 (11th Cir. 1996) ("The absence of [a federal defendant] from the state court proceeding did not deprive [the federal plaintiff] of an opportunity to press his claim"); *Gisslen v. City of Crystal*, 345 F.3d 624 (8th Cir. 2003) ("Federal court jurisdiction is not determined by whether the parties are identical, but by whether the claims are sufficiently separate from those of the state court action.")

a private use); *Florence v. Williams*, 439 So.2d 83 (Ala. 1983) (discussing probate court's making findings that a taking was for a public use); *see also Gober v. Stubbs*, 682 So.2d 430 (Ala. 1996) (affirming a denial of a petition for writ of mandamus on the grounds that a condemnation was for a public use); *Hemperly v. Crumpton*, 708 F.Supp. 1247, 1250 n. 5 (M.D. Ala. 1988) ("Past history has shown that Alabama courts are amenable to considering arguments by landowners that the purpose being served in acquiring property through condemnation serves no public purpose").

D. Factual Predicate Occurred after Initiation of State Suit

As Magistrate Judge Walker pointed out, the factual predicate for the Sophocleuses' claims did not occur until after the State of Alabama initiated the condemnation action.[40] Under Eleventh Circuit law, "res judicata does *not* apply where the facts giving rise to the second case only arise after the original pleading is filed in the earlier litigation." *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1298 (11th Cir. 2001) (emphasis in original). Res judicata, also known as claim preclusion, is the rule that "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414 (1980). Res judicata, collateral estoppel, and the *Rooker-Feldman* doctrine have a "close affinity" to one another. *Agripost, Inc. v. Miami-Dade County*, 195 F.3d 1225, 1229 n. 7 (11th Cir. 1999). If this court lacks jurisdiction over this

40. Order, filed Feb. 18, 2003 (Doc. no. 31), at 10.

case, then it cannot reach the question of whether res judicata applies. *Garry v. Geils*, 82 F.3d 1362, 1363 (7th Cir. 1996). However, given the similarities between res judicata and *Rooker-Feldman*, it is relevant to consider whether the *Rooker-Feldman* doctrine might be inapplicable to the Sophocleuses' claims because the factual predicate for them did not occur until after the state court action was filed.

Even if the doctrines of res judicata and *Rooker-Feldman* were identical, the Sophocleuses' claims would not be barred. Res judicata bars "claims in existence at the time the original complaint is filed or claims *actually* asserted by supplemental proceedings or otherwise in the earlier action." *Manning v. City of Auburn*, 953 F.2d 1355, 1360 (11th Cir. 1992) (emphasis in original). As discussed *supra*, the Sophocleuses did actually assert their claims in state court by filing an amended pleading and pretrial contentions. Thus, they are now barred from raising those issues again in federal court.

However, even if the Sophocleuses had not raised their claims in state court, the *Rooker-Feldman* doctrine would bar them. The rationale for the rule that claims arising after the original complaint is filed are not barred does not apply in the *Rooker-Feldman* context in the same way it does in the area of res judicata. The rationale for the rule in the area of res judicata is that when procedural rules, such as the Federal Rules of Civil Procedure, allow but do not require a party to supplement her pleadings, res judicata "creates no absolute duty to supplement a complaint." *Manning v. City of Auburn*, 953 F.2d 1355, 1360 (11th Cir. 1992). Thus, a party's decision not to supplement her pleadings to alert the court to new claims, based on new facts that had not occurred

when the case was initiated, does not bar the party from bringing a later action based on those claims.

However, courts take a different approach to permissive pleadings in cases involving the *Rooker-Feldman* doctrine. Federal claims that are inexplicably intertwined with state-court proceedings are barred by *Rooker-Feldman* when the plaintiff had a "reasonable opportunity" to litigate the claims in state court by making permissive filings. For instance, the Eleventh Circuit noted that a plaintiff who complained of disability discrimination in the consideration of his application for admission to the Florida bar had an opportunity to raise his claim in state court by making permissive filings. *Dale v. Moore*, 121 F.3d 624, 627 (11th Cir. 1997). He could have filed an answer to the Florida Bar Association's recommendation or could have filed a petition with the Florida Supreme Court; neither of these filings were mandatory. Because his federal claim was inexplicably intertwined with his state-court proceeding, and because he had an opportunity to raise his claims in state court, his claims were barred by the *Rooker-Feldman* doctrine.

Following similar reasoning, at least one federal appeals court has held that the *Rooker-Feldman* doctrine applied in a condemnation case in which the federal plaintiffs did not learn of the factual predicate for their federal claims until after the state-court action was commenced. There, the federal plaintiffs alleged that they did not learn of the facts underlying their federal claim until a hearing in the condemnation case that occurred two years after the condemnation proceeding was initiated. The court stated that even if that were true, the plaintiffs should have sought an immediate stay of the state

proceedings or should have appealed. The *Rooker-Feldman* doctrine barred the plaintiffs' claims. *Garry v. Geils*, 82 F.3d 1362, 1369 n. 13 (7th Cir. 1996).

Thus, the fact that the Sophocleuses did not learn of the facts underlying their federal claims until after the state condemnation case was filed does not change the result today. The Sophocleuses did assert their claims in pleadings before the state court. Even if they had not, they had ample opportunity to do so; had they not settled their case, they would have had a trial de novo in the state trial court in August 1999. 1975 Ala.Code § 18-1A-283.

IV. CONCLUSION

For the reasons explained above, this case will be dismissed. An appropriate judgment will be entered.

DONE, this the 26th day of January, 2004.

s/ Myron H. Thompson
MYRON H. THOMPSON
UNITED STATES DISTRICT JUDGE

Appendix B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

CIVIL ACTION NO. 00-T-652-E

JOHN AND THERESA SOPHOCLEUS,

Plaintiffs,

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, et al.,

Defendants.

JUDGMENT

In accordance with the memorandum opinion entered on this date, it is the ORDER, JUDGMENT, and DECREE of this court:

(1) The following motions are granted to the extent that this lawsuit is dismissed because the court lacks subject-matter jurisdiction: defendant DeJarvis Leonard's motion to dismiss the amended complaint, filed July 28, 2003 (Doc. no. 62); Reese & Howell, Inc.'s motion for summary judgment, filed October 20, 2003 (Doc. no. 71); and defendants Paul Bowlin, Jimmy Butts, Margie Champion Todd Hopper, and Leonard's motion for summary judgment, filed October 27, 2003 (Doc. no. 75).

Appendix B

(1) This case is dismissed because the court lacks subject-matter jurisdiction.

It is further ORDERED that costs are taxed against plaintiffs John and Theresa Sophocleus, for which execution may issue.

The clerk of the court is DIRECTED to enter this document on the civil docket as a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DONE, this the 26th day of January, 2004.

s/ Myron H. Thompson
MYRON H. THOMPSON
UNITED STATES DISTRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION FILED APRIL 2, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CIVIL ACTION NO. 00-W-652-E

JOHN and THERESA SOPHOCLEUS,

Plaintiff,

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, et al.

Defendants.

ORDER

Now pending before this court is the motion to dismiss the amended complaint (doc. #39, filed Mar. 24, 2003) filed by defendant Reese & Howell, Inc. ("Reese"). Upon consideration of the motion and for the following reasons, the court concludes that the motion is due to be DENIED.

DISCUSSION

Reese again argues that the claims in this action are "inextricably intertwined" with the State of Alabama's earlier

condemnation action against the plaintiffs. As noted by the court in its previous order denying dismissal (doe. #31, p. 8), a federal claim is inextricably intertwined with a state court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Siegel v. Lapore*, 234 F.3d 1163, 1172 (11th Cir. 2000) (en banc). The doctrine bars claims "which are, or should have been, central to the state court decision, even if those claims seek a form of relief that might not have been available from the state court." *Goodman ex rel Goodman v. Sipos*, 259 F.3d 1327, 1333 (11th Cir. 2001). The claims in this case do not fit either description. The condemnation action was concerned only with the question of how much money the State of Alabama should pay the plaintiffs for their land. That issue is not before this court. The actions of the defendants in this case were not before the state court and neither was nor should have been central (or even relevant) to the valuation of the plaintiffs' land. Unlike the plaintiffs in *Powell v. Powell*, 80 F.3d 464, 466-67 (11th Cir. 1996), cited by Reese, the plaintiffs here are presenting no claim that amounts to a collateral attack on the state court's judgment.[1] They do not challenge the state's right to condemn their land, the amount they were paid, or the state's condemnation procedures and, if they prevail, the state court's judgment will be unaffected. The *Rooker-Feldman* doctrine exists to prevent collateral review of state court judgments

1. In *Powell*, the state court awarded alimony to the plaintiff's wife pursuant to a federal statute. The plaintiff then brought suit in federal court attacking the statute. Thus, in that case, the state court's judgment concerning how much alimony the plaintiff would pay would have had to be wrong for him to prevail on his federal claim. *Powell*, 80 F.3d at 467.

in the lower federal courts, *Powell*, 80 F.3d at 467, not to bar all federal claims related to an earlier state claim. *See Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994).

As an alternative basis for dismissal, Reese argues that this court should decline to exercise supplemental jurisdiction over the state-law claims against itself. Under 28 U.S.C. § 1367(c), the court may decline to exercise supplemental jurisdiction over a claim if "the claim raises a novel or complex issue of State law"or "the claim substantially predominates over the ...claims over which the district court has original jurisdiction." In deciding whether to do so, the court should "take into account concerns of comity, judicial economy, convenience, fairness, and the like." *Lewis v. City of St. Petersburg*, 260 F.3d 1260, 1267 (11th Cir. 2001), *quoting Crosby v. Paulk*, 187 F.3d 1339, 1352 (11th Cir. 1999). Here, the claims of trespass, outrage, and invasion of privacy against Reese (count BIB) are identical to those against the individual defendants (count B1A), arise from the same occurrences, and involve common questions of law and fact – in particular, the questions of whether Reese employees, acting at the ultimate direction of the individual defendants, committed the torts in question. The actions of Reese and its employees are likewise central to the federal questions, particularly the claims that the plaintiffs' land was taken for private use and without due process of law. Convenience and judicial economy dictate that these questions be decided together. Furthermore, through no fault of the parties, the resolution of this case has been delayed considerably. Rule 1 of the Federal Rules of Civil Procedure directs the court to employ its powers (including the power to dismiss) to ensure the just, speedy, and inexpensive

determination of every action. Dismissing the claims against Reese at this late date, so that the plaintiffs must file a new action in state court, would in the judgment of the court impose unreasonable delay and expense on the parties. The court will therefore retain the remaining claims.

For the foregoing reasons, it is

ORDERED that defendant Reese & Howell's motion to dismiss be and hereby is DENIED.

Done this 2nd of April, 2003.

Susan Russ Walker
s/ SUSAN RUSS WALKER
UNITED STATES MAGISTRATE JUDGE

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION FILED FEBRUARY 18, 2003

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA EASTERN DIVISION

CIVIL ACTION NO. 00-W-652-E

JOHN and THERESA SOPHOCLEUS,

Plaintiff,

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, et al.

Defendants.

ORDER

Plaintiffs John and Theresa Sophocleus bring this action against the Alabama Department of Transportation ("Department"), Reese & Howell, Inc. ("Reese"), and the following individuals: Margie Todd, title relocation officer for the Department; Paul Bowlin, assistant highway department director for the Department; Jimmy Butts, former highway director for the Department; Mack Roberts, current highway director for the Department; and Rhonda Ashworth, federal relocation officer. The plaintiff's allege various constitutional violations under 42 U.S.C. §§ 1983 and 1985

and several claims under state law in connection with the condemnation and seizure of their land in 1998-99. The case is now before this court[1] on separate motions to dismiss filed by Reese (doc. #7, filed June 21, 2000) and the Department (doc. #9, filed June 29, 2000).[2] Upon consideration of the motions and for the following reasons, the court concludes that the motions to dismiss are due to be GRANTED with respect to claims A2A and A2B, GRANTED with respect to all claims against the Alabama Department of 'transportation, GRANTED with respect to all claims against defendants Todd, Bowlin, Butts, and Roberts in their official capacities, and DENIED with respect to all other claims.

The court further concludes that the plaintiffs' allegations of constitutional violations do not meet the pleading standards required by this circuit for claims under 42 U.S.C. § 1983, and it is therefore

ORDERED that the plaintiffs shall have until March 10, 2003 to file an amended complaint, and that if the plaintiffs do not do so, the remaining federal claims in the current complaint will be subject to dismissal.

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1. Pursuant to 28 U.S.C. § 636(c), all parties have consented to the conduct of all proceedings by the United States Magistrate Judge (doc. #17, filed July 21, 2000).

2. The individual defendants are represented by the same counsel as the Department and have joined in the Department's motion and brief; for the sake of convenience, the court will refer to these documents and the arguments found therein as the Department's.

Appendix D

I.

BACKGROUND

The following facts are related in the complaint (doc. #l, filed May 19, 2000); for purposes of this motion to dismiss, the court will accept them as true.

In May, 1998, the State of Alabama condemned the plaintiffs' property, including their house. As provided by Alabama law, the commissioners[3] held a valuation hearing and appraised the property at $85,800, though the plaintiffs presented evidence that the valuation should have been $167,000. The plaintiffs appealed to the Circuit Court of Lee County, Alabama (compl. p. 2-3). In August, 1998, while the appeal was pending, someone wrote to the plaintiffs telling them to vacate their property by September 10. One or more defendants also visited the plaintiffs' home and asked whether the plaintiffs planned to leave (*id.* p. 5).

In October, 1998, the State deposited $85,800 with the probate court, and someone served the plaintiffs with a notice to vacate under Alabama's unlawful detainer statute (compl. p. 5). "On many days prior to November 6, 1998, state contractor employees and heavy earth moving machines came onto plaintiffs' property destroying landscaping, bushes, shrubs, and cutting down trees ... On November, 6, 1998, while the Sophocleus remained in their home, a contractor

3. As provided by Ala, Code § 18-1A-279, the commissioners are citizens with the qualifications of jurors who are appointed by the probate court specifically for the purpose of appraising land to be condemned.

employee for the state came upon the plaintiffs' property with a single backhoe and drove it toward the front door of the Sophocleus' home. There he was met by Mr. Sophocleus. No words were spoken and he left. Both before November 6,1998 and after, the contractor for the state made several unsolicited visits to the home of the plaintiffs and told Mr. Sophocleus to get off his land" (*id.* p. 5-6),

In December, 1998, the State filed suit in the District Court of Lee County to evict the plaintiffs. In court, the State argued that it had a pressing need to tear down the plaintiffs' house in order to build a highway. In January, 1999, the court found for the State and ordered the plaintiffs to vacate their land. The plaintiffs notified the court of their intent to appeal to the Circuit Court of Lee County (where the original condemnation action was still pending) (compl. p. 6).[4] "[T]he plaintiffs were informed by the defendants that if they did not vacate their home immediately and they lost their appeal, then the state would seek damages against them for holding up the construction of the highway, which could amount to millions of dollars and ruin them" (*id.* p. 7, emphasis in original). The plaintiffs therefore left their house and later borrowed money to purchase another (*id.* p. 7-8). The defendants did not tell them about federal relocation money (or else were vague on the subject) and did not provide them with the requisite forms to apply for that money (*id.* p. 8-9).

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4. In their response to the Department's motion to dismiss (doc. #19, filed July 25, 2000, p. 1), the plaintiffs assert that the defendants cross-appealed and stated in a supporting affdavit that "they were in need of immediate possession to tear the house down to build the highway."

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The State and plaintiffs settled the condemnation action for $145,000 (compl. p. 8), nine months after the plaintiff's left their home (*id.* p. 11). The defendants did not tear down the house until sometime after that and in the meantime "used the home of the plaintiffs either as a staging area, a storage area, or as sleeping quarters" (*id.* p. 7, 9).

The plaintiffs brought this action in 2000, asserting several claims under 42 U.S.C. §§ 1983 and 1985 and the fourth, fifth, and fourteenth amendments. Two of these claims involve the right to be free of seizures of property without due process of law. The first (count A1A) is that the defendants took the plaintiffs' property "without necessity and without law, simply because they could take it, when there was no real reason to take the property at the time they took it" – not for public use, but for the private enjoyment of the contractor's employees during the nine-month period between the plaintiffs' departure from the house and the time the house was torn down. The second (count A1B) is that the defendants evicted the plaintiffs "without proper judicial process, or by abuse of judicial process, and in violation of the law," because the eviction action in November of 1998 came while the plaintiffs' appeal from the condemnation proceedings was pending.

In the alternative, say the plaintiffs, even if the property was taken for "public use" at all, the defendants did not offer "just compensation" because they did not offer a reasonable sum during the long period between the initial condemnation action and the settlement (count A2A). The plaintiffs also charge that by not including a separate sum for relocation in addition to payment for the house, the defendants failed to offer just compensation (count A2B).

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The plaintiffs contend that the defendants violated their right to privacy "by leaving them homeless . . . [f]or the 9 months before the defendants agreed to pay the $145,000" (count A3A) and by taking their house for private use (count A3B). The plaintiffs also complain that the defendants violated their property rights by "[i]nvading the plaintiffs' property with earth moving machines before the actual eviction," by "coming on plaintiffs property continually when they were told to stay off the property and were informed that the plaintiffs had legal counsel" (count A4A), and by "[i]nvading the plaintiffs' property after they were evicted and taking over their home and then ultimately tearing it down," (count A4B). The plaintiffs charge that the defendants violated their right to "bodily integrity" by threatening them with an earth moving machine (count A4C).

The plaintiffs also bring state-law charges of trespass, abuse of process, violation of section 18-1A-26 of the Code of Alabama (which forbids a condemnor to arbitrarily advance or defer condemnation or take any other action "coercive in nature" in order to compel an agreement on the price to be paid for the property), invasion of privacy, and outrage (count B).

Finally (count C), the plaintiffs contend that the threat to sue for "millions of dollars" if the plaintiffs did not leave their house "deprived [them] of a meaningful pre- and post-deprivation remedy in bad faith" by inducing them to leave instead of continuing to defend against the eviction action, and thereby deprived them of procedural due process.

Appendix D

II.

STANDARD FOR DISMISSAL

"When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one." *Scheuer v. Rhodes*, 416 U.S. 232 (1974), "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test . . . Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader." *Id.*

In appraising the sufficiency of the complaint, courts follow the well-established rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The threshold for a complaint to survive a motion to dismiss is "exceedingly low." *Ancata v. Prison Health Servs. Inc.*, 769 F.2d 700, 703 (11th Cir. 1985). However, although the complaint must be read liberally in favor of the plaintiff, the court may not make liberal inferences beyond what has actually been alleged. *See Kramer v. Time Warner, Inc.*, 937 F.2d 767, 773 (2d Cir.1991). "(C)onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts

will not prevent dismissal." *Oxford Asset Management, Ltd. v. Jaharis*, 297 F.3d 1182 (11th Cir. 2002).

III.

DISCUSSION

A. Arguments Based on Preclusion

The plaintiffs assert that this court has jurisdiction over its federal claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343, and over its state law claims under 28 U.S.C. § 1367. The defendants challenge jurisdiction on the grounds that the earlier state-court litigation bars the current federal claims. The Department asserts that "this court lacks jurisdiction to review the state court settlement agreement" (doc. #10, p. 4). Reese invokes the *Rooker-Feldman* doctrine to the same effect, arguing that the issues raised in the current lawsuit are inextricably intertwined with those raised in the state condemnation proceedings and hence beyond this court's jurisdiction (doc. #7, p. 2-4, doc. #27, p. 2-4).

The Rooker-Feldman doctrine provides

> that federal courts, other than the United States Supreme Court, have no authority to review the final judgments of state courts. The doctrine extends not only to constitutional claims presented or adjudicated in a state court, but also to claims that are "inextricably intertwined" with a state court judgment. A federal claim is inextricably intertwined with a state court judgment "if the

> federal claim succeeds only to the extent that the state court wrongly decided the issues before it,"

Siegel v. Lapore, 234 F.3d 1163, 1172 (11th Cir. 2000) (en banc) (citations omitted). The doctrine bars claims "which are, or should have been, central to the state court decision, even if those claims seek a form of relief that might not have been available from the state court." In particular, the doctrine can apply to claims for monetary damages under 42 U.S.C. § 1983 when the plaintiff seeks damages for a constitutional violation based on issues related to the state case. *Goodman ex rel Goodman v. Sipos*, 259 F.3d 1327, 1333 (11th Cir. 2001).

Most of the plaintiffs' claims are not inextricably intertwined with the state condemnation proceedings. Counts A1A and A1B, in particular, do not state that the compensation paid to the plaintiffs was inadequate or that the state's condemnation process was invalid,[5] only that the defendants abused that process for a lengthy period before condemnation was complete (and that during that time the land was not taken "for public use" at all). The judgment of the state court adopting the parties' settlement agreement (doc. #27, ex. 2) would not have to be incorrect in any way for these claims to be valid. This court has jurisdiction to hear these claims.

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5. The plaintiffs did raise a constitutional challenge to Alabama's condemnation procedures during the state proceedings (doc. #27, ex. 1). However, as the plaintiffs have not raised that challenge here, it is irrelevant to the resolution of the current motions.

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The "alternative" claims found in counts A2A and A2B are another matter. These attack the sufficiency of compensation awarded by the state court. The fact that the state delayed payment after taking the land meant only that just compensation had to include interest sufficient to compensate the owner for the delay. *Kirby Forest Industries, Inc. v. United States*, 407 U.S. 1, 10 (1984); *Williams v. Alabama Power Co.*, 730 So. 2d 172,174-75 (Ala. 1999). This court could not hold that the judgment of the Lee County Circuit Court failed to include constitutionally-mandated interest or wrongly included federally-mandated relocation money without finding that the state court incorrectly decided issues before it. The Alabama Court of Civil Appeals, not this court, was the correct place to challenge the state court's findings. Counts A2A and A2B are therefore due to be dismissed.

The Department claims that the plaintiffs have no standing to litigate "any matter involving" their former property (doc. #10, p. 5), because the state now owns it as a result of the condemnation proceedings. However, to have standing at this early stage of litigation, all a plaintiff needs to allege is actual or imminent injury resulting from the conduct of the defendant, such that a favorable verdict by the court would likely redress the injury. *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560 (1992). The plaintiffs have alleged actual (past) injury resulting from the defendants' conduct, and have requested monetary and injunctive relief that would serve to redress the injury. They have standing to bring this action.

Both Reese and the Department argue that the plaintiff's claims are barred by both issue preclusion and claim preclusion. However, in the condemnation action, the issue was the correct valuation of the land. Except for claims A2A and A2B, which this court will dismiss, the claims raised in this action do not involve the valuation of the land. Indeed, these claims arose after the state initiated the condemnation action from which the plaintiffs appealed. The plaintiffs could not have raised them in the probate court (which, arguably, would not have had jurisdiction to hear them in any case; *see Ala. Code* § 12-13-1; *Wallace v. State*, 507 So. 2d 466, 467-68 (Ala. 1987)).

B. Arguments Based on Immunity

All defendants in this action have claimed immunity of one sort or another.

The Department claims sovereign immunity from suit under §§ 1983 and 1985 as an agency of the State of Alabama, citing *Wright v. Butts*, 953 F. Supp. 1352, 1358 (M.D. Ala. 1996). The plaintiffs agree that the Department is immune from their claims for monetary damages, but argue that their claims for injunctive relief are not barred by sovereign immunity. To determine the merits of this argument, the court must examine the plaintiffs' demand for injunctive relief.

Beyond general claims for "appropriate ... equitable relief" and "further, different, or additional relief," the plaintiffs' only prayer for non-monetary relief is as follows: "Grant Plaintiffs a permanent injunction enjoining Defendants ... from continuing to violate the Constitution

of the United States and order the defendant to find for the plaintiffs a comparable house." The first of these two requests may not be granted under Rule 65 (d) of the Federal Rules of Civil Procedure, which requires that an injunction be "specific in terms"; a federal court may not grant an injunction simply commanding defendants to "obey the law."[6] *Burton v. City of Bell Glade*, 178 F.3d 1175, 1200-01 (11th Cir. 1999), Even if the plaintiffs or the court were to fashion a narrower injunction more closely tailored to the facts of this case, the plaintiffs have not demonstrated that they have standing to bring suit for such relief. The likelihood that they themselves will be subject to the same treatment again is too small to provide an "actual or imminent" injury as required to create a case or controversy under Article III of the United States Constitution. *See Los Angeles v. Lyons*, 461 U.S. 95, 102-03 (1983); *O'Shea v. Littleton*, 414 U.S. 488, 495-99 (1974).

The second requested injunction is clearly an order to redress a past wrong rather than to prevent future wrongdoing, and if the Department as such were ordered to find a comparable house for the plaintiffs, the funds for doing so would come from the state treasury. Such relief is constitutionally barred, even though it is equitable in nature. *See Green v. Mansour*, 474 U.S. 64, 65-66 (1985); *Florida Association of Rehabilitation Facilities v. Florida*

6. In addition to the overbreadth problem, such an injunction would raise serious due process concerns. All citizens, entities, and governments are already permanently enjoined from violating the laws by the laws themselves; to grant a permanent injunction of this kind against particular persons would be to replace their constitutionally guaranteed trials with contempt hearings.

Department of Health & Rehabilitative Services, 225 F.3d 1208, 1220-22 (11th Cir. 2000). The Department is immune from suit under the federal claims raised here.

Defendants Todd, Bowlin, Butts, and Roberts are all employees of the Department. The plaintiff sues them "individually and in their official capacity" (compl. p. 2). The Department's immunity extends to these individual defendants in their official capacities, and to the extent they are sued in their official capacities, the federal claims against them must be dismissed. *Jackson v. Georgia Department of Transportation*, 16 F.3d 1573, 1575 (11th Cir. 1994).[7]

The state claims against the Department and against Todd, Bowlin, Butts, and Roberts in their official capacities are likewise due to be dismissed. Such suits are suits against the State of Alabama, which may not be sued under its own laws without its consent, consent that has not been given in this case. *See Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 98-99 (1984).

The individual defendants claim qualified immunity from the claims brought against them in their individual capacities, saying that the alleged actions took place within their discretionary authority. Under *Harlow v. Fitzgerald*, 457 U.S.

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7. The court cannot at this time determine whether the claims against Ashworth in her official capacity are due to be dismissed, because neither party has specified for whom she works as a "federal relocation officer." The plaintiff served her with process "c/o Alabama Department of Transportation," which strongly suggests that she is an employee of that department, but the court will need more than surmise in order to dismiss.

800, 818 (1982), "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." To decide whether the defense of qualified immunity applies, the court must therefore determine (1) whether the alleged actions took place within the defendants' discretionary authority, and (2) whether the alleged actions may have violated clearly established federal statutory[8] or constitutional rights. *Maggio v. Sipple*, 211 F.3d 1346, 1350 (11th Cir. 2000).

The court cannot answer the first question with respect to any individual defendant, because neither side has specified the powers and duties of any individual defendant. In the case of defendant Ashworth, even the agency employing her is unstated in the complaint. Without knowing the scope of a defendant's discretionary authority, the court cannot tell whether the defendant acted within that authority, and therefore cannot determine whether that defendant is shielded by qualified immunity. The court therefore will not dismiss the claims against these defendants, but will leave the question of their entitlement to qualified immunity open at this stage.

Reese claims qualified immunity as a state-employed firm. Under *Richardson v. McKnight*, 521 U.S. 399, 413- 14 (1997), when "a private firm, systematically organized to

8. The fact that an action violates state statutes is not sufficient to defeat qualified immunity. *Davis v. Scherer*, 468 U.S. 183, 195-96 (1984).

assume a major lengthy administrative task-with limited direct supervision by the government, undertakes that task for profit and potentially in competition with other firms," that firm does not enjoy qualified immunity against lawsuits under 42 U.S.C. § 1983. In the absence of further information about the duties of Reese and the supervision to which it was subjected, the court will not dismiss the claims against Reese on this ground.

C. Pleading requirements

The Department argues (doc. # 10, p. 5) that the sections of the complaint dealing with § 1983 claims do not meet the heightened pleading standards of the Eleventh Circuit, citing *Wideman v. Shallowford Community Hospital*, 826 F.2d 1030, 1032 (11th Cir. 1987) and *Ross v. Alabama*, 893 F. Supp. 1545,1553 (M.D. Ala. 1995). Under this standard, a plaintiff must allege with some factual detail a deprivation of rights, privileges, or immunities secured by the constitution or laws of the United States; and that a person acting under color of state law caused the deprivation. As applied by this court, this standard requires some factual detail about how each defendant "fits into the scheme" of alleged deprivations of rights. *Ross*, 893 F. Supp. 1545 at 1554-55. Of such detail the plaintiffs have provided little or none. The complaint only hints, without specifying, that Reese is the "contractor" referred to in the factual allegations, and does not explain the role played by any individual defendant. The plaintiffs have not met the pleading requirements applied by this circuit.

The correct remedy in this situation is to permit the plaintiffs to amend the complaint. *Ross*, 893 F. Supp. 1545 at 1554. This remedy is in keeping with the practice of federal courts in applying Rule 9(b), which requires specificity in pleading fraud; a plaintiff should have at least one opportunity to amend his complaint before suffering dismissal for failure to plead with specificity. *Cooper v. Blue Cross & Blue Shield*, 19 F.3d 562, 568-69 (11th Cir. 1994). It is also in keeping with the general principles of notice pleading and the Federal Rules of Civil Procedure, which favor resolution of actions on the merits. *Conley v. Gibson*, 355 U.S. 41, 48 (1957). The court will therefore permit the plaintiffs to file an amended complaint on or before March 10, 2003.

The plaintiffs are advised that Local Rule 15.1 requires them to file an entire amended complaint, rather than filing amendments with the remainder of the previous complaint incorporated by reference, and that Local Rule 5.5 requires the pages of any pleading filed with this court to be numbered consecutively. The plaintiffs are further advised that Rule 10(b) of the Federal Rules of Civil Procedure requires that averments in a complaint be made in numbered paragraphs and that each paragraph shall be limited as far as practicable to the statement of a single set of circumstances, so that the defendants may respond to factual allegations and legal claims individually. Finally, the plaintiffs are advised that failure to file an amended complaint within the time allotted by the court may result in the dismissal of their remaining federal claims.

Appendix D

IV.

CONCLUSION

For the foregoing reasons, it is therefore

ORDERED that the defendants' motions to dismiss be GRANTED with respect to counts A2A and A2B of the complaint, GRANTED with respect to all claims against the Alabama Department of Transportation, GRANTED with respect to all claims against defendants Todd, Bowlin, Butts, and Roberts in their official capacities, and DENIED with respect to all other claims, and it is further

ORDERED that the plaintiffs shall have until March 10, 2003 to file an amended complaint, and that if the plaintiffs do not do so, the remaining federal claims in the current complaint will be subject to dismissal.

Done this 18th of February, 2003.

s/ Susan Russ Walker
SUSAN RUSS WALKER
UNITED STATES MAGISTRATE JUDGE

APPENDIX E — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING FILED OCTOBER 20, 2004

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 04-10834-HH

JOHN SOPHOCLEUS, THERESA SOPHOCLEUS,

Plaintiffs-Appellants,

versus

STATE OF ALABAMA DEPARTMENT OF TRANSPORTATION, REESE & HOWELL, INC., MARGIE CHAMPION TODD, individually, PAUL BOWLIN, individually, JIMMY BUTTS, individually, DEJARVIS LEONARD,

Defendants-Appellees.

On Appeal from the United States District Court for the Middle District of Alabama

BEFORE: BIRCH, DUBINA and MARCUS, Circuit Judges.

Appendix E

PER CURIAM:

The petition (s) for rehearing filed by the APPELLANTS is DENIED.

ENTERED FOR THE COURT:

s/ [illegible]
UNITED STATES CIRCUIT JUDGE

Supreme Court, U.S.
FILED
JUN 15 2005
OFFICE OF THE CLERK

(2)

No. 04-1113

IN THE
Supreme Court of the United States

JOHN SOPHOCLEUS, et ux.,
Petitioners,

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, et al.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS ALABAMA DEPARTMENT OF TRANSPORTATION, TODD, BOWLIN, BUTTS, AND LEONARD

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QUESTION PRESENTED
(Restated)

Did the Court of Appeals for the Eleventh Circuit correctly affirm the district court's dismissal for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine where: (i) Petitioners' claims are "inextricably intertwined" with a state-court condemnation judgment; and (ii) Petitioners raised or could have raised their claims in the condemnation proceedings in state court?

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BRIEF IN OPPOSITION FOR RESPONDENTS ALABAMA DEPARTMENT OF TRANSPORTATION, TODD, BOWLIN, BUTTS, AND LEONARD

Respondents Alabama Department of Transportation (ALDOT), and current and former ALDOT employees Margie Champion Todd, Paul Bowlin, Jimmy Butts, and DeJarvis Leonard, in their individual capacities, respectfully file this brief in opposition to the petition for a writ of certiorari filed by Petitioners John Sophocleus and Theresa Sophocleus.

OPINIONS BELOW

The Court of Appeals' opinion, Pet. App. 1a–5a, is unreported; it is noted in a "Table of Decisions Without Reported Opinions" at 116 Fed. Appx. 246. The Court of Appeals' denial of rehearing en banc is noted at 124 Fed. Appx. 644. The district court's opinion and judgment dismissing this case for lack of subject-matter jurisdiction, Pet. App. 6a–32a, are reported at 305 F. Supp. 2d 1238.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Takings Clause of the Fifth Amendment to the United States Constitution provides:

> [N]or shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

U.S. Const. amend. XIV, § 1.

Section 1983 of Title 42 of the United States Code provides, in relevant part, as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983 (2000).

Section 1985 of Title 42 of the United States Code provides, in relevant part, as follows:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in

> furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3) (2000).

STATEMENT

In May 1998, the State of Alabama filed a petition for condemnation in the Probate Court of Lee County, Alabama, to condemn Petitioners' home for the purpose of widening U.S. Highway 280 from two to four lanes between Dadeville and Opelika, Alabama. Pet. App. 8a; *see* Ala. Code § 18-1A-71 (1997). After appointing commissioners to assess the value of Petitioners' property, *see* Ala. Code §§ 18-1A-279 to 18-1A-282 (1997), the probate court entered a Decree of Condemnation awarding Petitioners $85,000 for their property in August 1998. Pet. App. 8a. The State paid $85,000 into the probate court on August 7, *see* Ala. Code § 18-1A-284 (1997), and Petitioners received a letter demanding that they vacate their property by September 10, 1998. Pet. App. 8a.

Petitioners refused to vacate their home, however. *Id.* They also appealed the probate court decree to the Circuit Court of Lee County, Alabama, for a trial de novo. Pet. App. 9a; *see* Ala. Code § 18-1A-283 (1997). The State cross-appealed. Because Petitioners refused to vacate their property, in December 1998 the State also filed a separate eviction proceeding against Petitioners in the District Court of Lee County. Pet. App. 9a. After a trial in January 1999, the district court entered a writ of possession evicting Petitioners and turning over posses-

sion of their property to the State. Pet. App. 10a. Petitioners did not appeal their eviction, and moved out of their house on January 18, 1999. *Id.* at 10a–11a.

In the state district court eviction proceeding, Petitioner John Sophocleus filed a counter-affidavit stating "that 'officials from the Department of Transportation now intend to use my house . . . for use by public transportation officials for work purposes. Consequently, this property and the house located thereon are not currently needed for the construction of Highway 280 as the Department of Transportation has no intention of razing the house.'" Pet. App. at 9a–10a. Petitioners made similar allegations, and requested relief based on those allegations, in their state circuit court appeal in the condemnation proceeding:

> On August 11, 1999, the Sophocleuses filed an "Amended Appeal" in the condemnation case in the state trial court. In this pleading, the Sophocleuses stated that they were evicted in January 1999 "under allegations to the Court that there was an immediate need for the property and that the structures thereon would be immediately destroyed," but that "[d]espite these allegations to the court, the State failed and refused, for an unreasonable period of time, to destroy the Appellants' home and/or to make use of the condemned property." They further alleged that the actions of the State were "capricious, arbitrary and done in bad faith." They asked the court to "set aside the decision of the Commissioners" as to the proper compensation for their land, and to award "other, further or different relief, including but not limited to punitive damages, damages for mental anguish and expenses for the second relocation, as may be just and proper."

> Also on August 11, the Sophocleuses filed pre-trial contentions with the state trial court in which they repeated the allegations, made in their counter-affidavits in the eviction case, that in December 1998 "the State of Alabama had no current need for the condemned property and that the State intended to use the structures located on the property for storage, despite the fact that no just compensation had been paid for the same." They further alleged that since their eviction in January 1999, "their house remains intact and inhabitable."

Pet. App. 12a–13a (footnotes omitted).

The day before the condemnation proceeding was set for trial de novo, however, Petitioners settled with the State. Pet. App. 13a. "The Sophocleuses agreed to the condemnation[,] and the State agreed to pay them $145,000." *Id.* This amount was $60,000 more than the appraised fair-market value fixed by the commissioners in probate court. *See* Pet. App. 8a. The state circuit court then entered an order and decree of condemnation holding, in relevant part, as follows:

> "The parties to this cause reached a settlement and advised this Court of the same. Thereupon, the Court proceeded to hear the allegations of the application or petition for an order of condemnation, and upon the consideration of said application and with the consent and agreement of the parties and for good cause shown, it is the opinion and judgment of the Court that the allegations of said petition are true, and that it is necessary that the property described in Exhibit "A" be condemned for the uses and purposes stated in said petition and that the said application for order of condemnation should be granted."

Pet. App. 13a–14a. Petitioners' house was razed in November 1999, after which the Highway 280 expansion

project was completed and now occupies the land where the house was located. Pet. App. 14a.

In May 2000—nearly nine months after the state circuit court entered its order and decree of condemnation—Petitioners filed this action in the United States District Court for the Middle District of Alabama. After the case was reassigned from a magistrate judge to a district judge, the district court dismissed the case for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine. Disagreeing with the magistrate judge, the district court held that Petitioners' federal claims were "inextricably intertwined" with the state-court judgment in their condemnation proceedings. Pet. App. 21a–25a.[1] The court also held that Petitioners had actually presented their claims, albeit in a different form, in the state-court condemnation proceedings, Pet. App. 19a–20a, and that "even if they had not raised their claims in state court, [they] certainly had the opportunity to do so," Pet. App. 26a–27a. The court also concluded that Petitioners' claims were barred under *Rooker-Feldman* although the factual predicate for those claims did not arise until after the State initiated the condemnation proceedings. Pet. App. 27a–30a.

The Court of Appeals for the Eleventh Circuit affirmed the district court's dismissal in a brief, unreported *per curiam* opinion. Pet. App. 1a–5a. Based on its review of the record, the court of appeals concluded that

> the district court did not err by concluding, for *Rooker-Feldman* purposes, that this claim is inextricably intertwined with the state condemnation proceedings. As the Seventh Circuit put it in an analogous case, if Appellants meant to challenge

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[1] The district court also held that it was not required to follow the magistrate judge's conclusions under the law-of-the-case doctrine. Pet. App. 15a–17a.

> the state condemnation proceeding as unconstitution, "they should have done so through the Illinois condemnation process, and ultimately to the United States Supreme Court if necessary."

Pet. App. 5a (quoting *Garry* v. *Geils*, 82 F.3d 1362, 1368–69 (7th Cir. 1996)). The court of appeals also agreed that Petitioners had the opportunity to raise their arguments in the state-court proceedings. *Id.* Accordingly, the court of appeals "affirm[ed] the district court's dismissal of this case for lack of subject-matter jurisdiction." *Id.*

REASONS FOR DENYING THE PETITION

I. The Claims in This Action Are "Inextricably Intertwined" With the Judgment in the State-Court Condemnation Proceedings Against Petitioners, and Petitioners Raised or Could Have Raised Their Claims in State Court.

A. Petitioners' Claims Are "Inextricably Intertwined" with the State-Court Judgment.

In *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), this Court held that the federal district courts' jurisdiction is "strictly original," and that "no court other than this court could entertain a proceeding to reverse or modify" a state-court judgment. *Id.* at 416. Sixty years later, in *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983), this Court noted that "[i]f the constitutional claims presented to a United States district court are *inextricably intertwined* with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the district court is in essence being called upon to review the state-court decision. This the district court may not do." *Id.* at 482 n.16 (emphasis added). Thus, as the Court noted earlier this year, in *Feldman*, the Court "explained that a district court could not entertain constitutional

claims attacking a state-court judgment, even if the state court had not passed directly on those claims, when the constitutional attack was 'inextricably intertwined' with the state court's judgment." *Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1523 n.1 (2005).

The "inextricably intertwined" aspect of *Feldman* can be a thorny issue, but over the years "[t]he most useful—and frequently quoted—definition of 'inextricably intertwined' comes from Justice Marshall's concurrence in *Pennzoil Co. v. Texaco, Inc.*[, 481 U.S. 1 (1987)]." Suzanna Sherry, *Judicial Federalism in the Trenches: The* Rooker-Feldman *Doctrine in Action*, 74 Notre Dame L. Rev. 1085, 1097 (1999). In *Pennzoil*, Justice Marshall observed that

> [w]hile the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that *the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.* Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

481 U.S. at 25 (Marshall, J., concurring in judgment) (emphasis added). Eleven of the thirteen circuit courts of appeals have used Justice Marshall's definition in deciding whether federal claims are "inextricably intertwined" with a state-court judgment within the meaning of *Feldman*. *See Hill* v. *Town of Conway*, 193 F.3d 33, 39 (1st Cir. 1999); *Hachamovitch* v. *DeBuono*, 159 F.3d 687, 694–95 (2d Cir. 1998); *Centifanti* v. *Nix*, 865 F.2d 1422, 1430 (3d Cir. 1989); *Plyler* v. *Moore*, 129 F.3d 728, 731–32

(4th Cir. 1997), *cert. denied*, 524 U.S. 945 (1998); *Anderson* v. *Charter Township of Ypsilanti*, 266 F.3d 487, 492–93 (6th Cir. 2001), *Lewis* v. *Anderson*, 308 F.3d 768, 772 (7th Cir. 2002), *cert. denied*, 538 U.S. 908 (2003); *Keene Corp.* v. *Cass*, 908 F.2d 293, 296–97 (8th Cir. 1990); *Fontana Empire Ctr., LLC* v. *City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002); *Varallo* v. *Sup. Ct. of Colo.*, 176 F.3d 490, 1999 WL 140161, at *1 (10th Cir. Mar. 16, 1999) (unreported decision); *Siegel* v. *LePore*, 234 F.3d 1163, 1172 (11th Cir. 2000) (en banc); *Johnson* v. *Way Cool Mfg.*, 20 Fed. Appx. 895, 898 (Fed. Cir. 2001) (unreported decision).[2]

In this case, the Eleventh Circuit affirmed the district court's conclusion that Petitioners' claims in federal court were "inextricably intertwined with the state condemnation proceedings" against them, holding that Petitioners should have presented their claims in the state-court proceedings. Pet. App. 5a (quoting *Garry* v. *Geils*, 82 F.3d 1362, 1368–69 (7th Cir. 1996)). As the district court correctly explained:

> If the Sophocleuses were to prevail in this case by convincing this court that the taking of their land was for a private use from January to August 1999, and were to win damages based on that claim, that would mean that the state court was wrong in concluding (1) that the condemnation was necessary and for a public use, and (2) that the compensation the Sophocleuses received was adequate.

Pet. App. 21a. In other words, "the Sophocleuses' claims directly implicate the correctness of the state court's judgment: if they are right that the State took their home

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[2] The Fifth Circuit and District of Columbia Circuit have not disagreed; they simply have not addressed Justice Marshall's definition.

for private use, then the state court was wrong to conclude that the condemnation was for a public use." Pet. App. 23a.

Under the "inextricably intertwined" aspect of the *Rooker-Feldman* doctrine—as refined in *Exxon Mobil*—the district court lacked subject-matter jurisdiction over Petitioners' federal-court claims.

B. Petitioners Raised or Could Have Raised Their Claims in State Court.

Petitioners incorrectly maintain that they could not present their claims in their condemnation appeal to the state circuit court for trial de novo. *See* Pet. at 11. In fact, the district court correctly found that Petitioners *had* raised those claims in state court, albeit not in the same form as their claims in federal court. Pet. App. 19a–20a. Moreover, and in any event, Petitioners could have presented their claims in state court in essentially the same form they are in now—as counterclaims and third-party claims. The Supreme Court of Alabama has allowed a condemnee to bring a counterclaim for wrongful condemnation in a circuit court appeal for trial de novo. *See Ex parte Palughi*, 494 So. 2d 404, 407–08 (Ala. 1986) (allowing condemnee to pursue counterclaim for wrongful condemnation under prior law). Although *Ex parte Palughi* was decided under prior law, its holding that the Alabama Rules of Civil Procedure govern condemnation appeals to circuit court remains good law. *See State* v. *Reynolds*, 887 So. 2d 848, 852–54 (Ala. 2004) (quoting *Palughi*); Ala. Code § 18-1A-70 (1997) (Alabama Rules of Civil Procedure govern procedure for eminent domain except as otherwise provided in Alabama Eminent Domain Code). Those rules provide for permissive and compulsory counterclaims, *see* Ala. R. Civ. P. 13, and third-party claims, Ala. R. Civ. P. 14(a), and Petitioners could have asserted all of their present claims as counterclaims or third-party claims under those rules. *See*

Palughi, 494 So. 2d at 408 n.1 (noting Ala. Code § 18-1A-70).

Thus, as the court of appeals and the district court concluded, Petitioners' claims in this action are "inextricably intertwined" with the judgment in the state-court condemnation proceeding within the meaning of *Feldman*, and Petitioners did (or could have) presented their claims in state court. Accordingly, the courts below correctly determined that the district court lacked subject-matter jurisdiction.

II. Petitioners Are Inviting the Federal Courts to Review and Reject the State-Court Judgment in Their Condemnation Proceedings.

Now apparently convinced that they were on the losing end of their state-court settlement, Petitioners seek to have a federal district court effectively reverse (at least in part) their state-court judgment and award them additional damages. As the district court recognized, to award additional damages for the alleged private use of Petitioners' property from January–August 1999 would require the district court effectively to reverse the state-court judgment that the taking was for a public use—at least for the eight months between January and August 1999.

Thus, this case fits the classic mold of *Rooker-Feldman* doctrine: "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil*, 125 S. Ct. at 1521–22. Petitioners artfully plead their grievances as distinct claims for damages, but the essence of their claims is nonetheless that the state court was wrong to hold that the State's taking was for a public purpose—at least for part

of the time the property was taken—and that the state court's compensation for the taking was inadequate. An award of damages to Petitioners in federal court would thus work a reversal, or at least a modification, of the state-court judgment in a fashion prohibited by *Rooker* and *Feldman*.

III. Petitioners Allege No Conflict in the Circuits, and this Case Presents a Poor Vehicle for Further Refinement of the *Rooker-Feldman* Doctrine.

In their Petition, Petitioners do not allege any conflict among the courts of appeals on the application of the *Rooker-Feldman* doctrine to their federal claims. Moreover, as Respondent Reese & Howell, Inc., explains, the alleged conflict between the decision below and prior decisions of this Court is illusory. In particular, reconsideration in light of *Exxon Mobil* is not warranted because, as already shown, Petitioners fit the *Rooker-Feldman* paradigm of "state-court losers complaining of injuries caused by state-court judgments." *Exxon Mobil*, 125 S. Ct. at 1521–22.

In addition, this case presents a poor vehicle for further refinement of the *Rooker-Feldman* doctrine after *Exxon Mobil*. This is so, first, because the underlying "private use" claims are frivolous. *See Allegheny County* v. *Frank Mashuda Co.*, 360 U.S. 185, 199 n.1 (1959) (Clark, J., dissenting) (characterizing as frivolous respondents' claim that lease of strip of condemned land to contractor for storage of supplies while contractor expanded public airport constituted abandonment of public use). Even if a court were to accept Petitioners' assertion that the temporary use of their home by a contractor while engaged in widening a highway constituted a private use, such incidental use would not change the overarching character of the condemnation of Petitioners'

property for a public use. "The general rule is well settled that the exercise of eminent domain for a public purpose which is primary and paramount will not be defeated by the fact that incidentally a private use or benefit will result which would not of itself warrant the exercise of the power." *Eminent Domain: Combination of Public and Private Uses or Purposes*, 53 A.L.R. 9, 12 (1928); *see Hendersonville Light & Power Co.* v. *Blue Ridge Interurban Ry. Co.*, 243 U.S. 563, 569–70 (1917) (Holmes, J.) (sale of surplus electric power generated by dam was "a possible incident, necessary to prevent waste, of the primary public use"); *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 73 (1913) ("If the primary purpose [for building dam] is legitimate, we can see no sound objection to leasing any excess of power over the needs of the government."); *Kaukauna Water Power Co.* v. *Green Bay & Miss. Canal Co.*, 142 U.S. 254, 273 (1891) ("But if, in the erection of a public dam for a recognized public purpose, there is necessarily produced a surplus of water, which may properly be used for manufacturing purposes, there is no sound reason why the state may not retain to itself the power of controlling or disposing of such water as an incident of its right to make such improvement."); *Swan Lake Hunting Club* v. *United States*, 381 F.2d 238, 242 (5th Cir. 1967) ("Where both public and private use are to be made of property sought to be condemned, the exercise of the power will not be defeated if the private use is sufficiently subordinate to the public use as to be incidental to it."); *Gober* v. *Stubbs*, 682 So. 2d 430, 435 (Ala. 1996) (" ' "Once it is determined that the taking is for a public purpose the fact that private persons may receive benefit is not sufficient to take away from the enterprise the characteristics of a public purpose." ' ") (quoting *Florence* v. *Williams*, 439 So. 2d 83, 89 (Ala. 1983), in turn quoting *Redevelopment Agency of City & County of San Francisco* v. *Hayes*, 122 Cal. App. 2d 777, 804, 266 P.2d 105, 122, *cert. denied*, 348 U.S. 897 (1954)); *N. Ward Co.* v. *Bd. of Street Commr's of City of Boston*,

217 Mass. 381, 386, 104 N.E. 965, 967 (1914) ("Nor can it be said that this taking was invalid because made at the request of a contractor and because the land taken was intended to be used, for some time at least, by that contractor."); *see generally* 29A C.J.S. *Eminent Domain* § 29(c) (1992); 26 Am. Jur. 2d *Eminent Domain* § 55 (1996).

Second, this case presents a poor vehicle because the Court of Appeals' opinion in this case is not reported, and is not even reprinted in the *Federal Appendix*. Thus, the Court of Appeals' decision is unlikely to have much, if any, impact on the *Rooker-Feldman* doctrine.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

TROY KING
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No. 04-1113

IN THE

Supreme Court of the United States

JOHN and THERESA SOPHOCLEUS,

Petitioners,

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, MARGIE CHAMPION TODD, PAUL BOWLIN, JIMMY BUTTS, DEJARVIS LEONARD, REESE & HOWELL, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT REESE & HOWELL, INC.

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Reese & Howell, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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INTRODUCTION

Respondent Reese & Howell, Inc. acknowledges that this Court recently refined what has become known as the "Rooker-Feldman Doctrine" in its opinion in *Exxon Mobil Corp. v. Saudi Basic Ind. Corp.*, __ U.S. __ (2005). That doctrine, derived from this Court's opinions in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1982), gives effect to this Court's exclusive appellate jurisdiction over state courts established by 28 U.S.C. § 1257. In *Exxon Mobil*, this Court recognized that "the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts and superceding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738." * at 8, 9. This case does not present an example of the unduly broad application of Rooker-Feldman. Rather, it involves nothing more than a straightforward application of the doctrine to prevent an unsuccessful state court litigant from "inviting district court review and rejection" of a state court judgment. *Id.* at * 10.

The subject of the Sophocleuses' Petition for Writ of Certiorari is a judgment of dismissal granted for Respondents Reese & Howell and the State of Alabama by the United States District Court for the Middle District of Alabama, and affirmed by the United States Court of Appeals for the Eleventh Circuit. Those Courts determined that the District Court had no jurisdiction to entertain the Sophocleuses' suit because to do so, the District Court would be required to decide whether an Alabama state court had improperly decided a condemnation dispute in which the state court

found a "public use" of the Petitioners' property, a decision which the Petitioners now want the federal courts to overturn.

The determination that this case was to be dismissed was a correct application of the Rooker-Feldman doctrine as outlined in *Exxon Mobil*. At the time the Sophocleuses filed their federal lawsuit, a final and non-appealable judgment already existed in Alabama state court finding that the condemnation of the Sophocleuses' property was for a valid, public use. The Sophocleuses filed the federal court action asking the federal court to overturn the state court and rule that the taking was in fact for a private use.

REASON FOR DENYING THE PETITION

On August 3, 1998, the Probate Court of Lee County, Alabama, issued a Decree of Condemnation condemning six tracts of land, one of which was owned by the Sophocleuses, for use as a right of way for the construction and maintenance of an expansion of U.S. Highway 280. In its decree, the Probate Court found the taking necessary for public use and awarded $253,400 to the landowners as compensation, $85,000 of which went to the Sophocleuses. The State of Alabama deposited with the Court the full amount of the $253,400 condemnation award and gave the Sophocleuses a 30 day notice to vacate the premises in accordance with Alabama law. Pursuant to Alabama law, the Sophocleuses and one other landowner appealed the condemnation order to the Circuit Court of Lee County.

In response to a Request for Admission served on the Sophocleuses in the state circuit court proceedings, the Sophocleuses admitted that the taking of their property was for public use, but claimed that the taking was not necessary.

In an affidavit filed in the state court condemnation proceeding, the Sophocleuses claimed that the State had taken the property for private use based on the allegation that the state failed to immediately destroy their home following the condemnation decree. They also contested the amount of compensation paid to them.

In accordance with Alabama law, the State of Alabama initiated eviction proceedings against the Sophocleuses in the state district court and that court issued a writ of possession. The Sophocleuses did not appeal that judgment.

The Sophocleuses ultimately settled the appeal of their condemnation case with the State of Alabama and obtained an additional $60,000 in compensation. On September 23, 1999, the Circuit Court of Lee County entered an Order and Decree of Condemnation again finding a public use and reflecting that the Sophocleuses and the State had settled the condemnation proceeding for a total compensation payment to the Sophocleuses of $145,000.

Six months after settling the condemnation case, in which the state court found the need for a public use taking, the Sophocleuses filed this action in federal court against the State of Alabama Department of Transportation, various Department of Transportation officials, a Federal Relocation Officer, and Reese & Howell, which served as the state's general contractor on the highway expansion project. The Sophocleuses amended their federal complaint on three separate occasions, and ultimately alleged claims of conspiracy, trespass, invasion of privacy and outrage against the remaining defendants based upon their assertion that the state had not taken their property "for the public good . . . but . . . for the private use of the contractors, Reese & Howell . . ."

On January 26, 2004, United States District Judge Myron H. Thompson entered an order dismissing the Sophocleuses' claims against Reese & Howell and the other defendants, applying the Rooker-Feldman doctrine. Judge Thompson determined that all of the allegations made by the Sophocleuses in their federal court lawsuit were "inextricably intertwined" with the judgment entered by the Alabama state court, in which the state court held that the condemnation of the Sophocleuses' property had been for an appropriate, public use. Judge Thompson correctly decided that the Sophocleuses could only be successful if the federal court determined "that the state court was wrong" in finding a public use:

> If the Sophocleuses were to prevail in this case by convincing this Court that the taking of their land was for a private use from January to August 1999, and were to win damages based on that claim, that would mean that the state court was wrong in concluding (1) that the condemnation was necessary and for a public use, and (2) that the compensation the Sophocleuses received was adequate.

Sophocleus v. Alabama Department of Transportation, 305 F. Supp. 2d 1238, 1247 (M.D. Ala. 2004).

On August 2, 2004, a three judge panel of the United States Court of Appeals for the Eleventh Circuit affirmed the District Court in a *per curiam* unpublished opinion.[1]

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[1] Eleventh Circuit Rule 2 supplementing Federal R. App. P. 36 provides that "[u]npublished opinions are not considered binding precedent. They may be cited as persuasive authority . . ."

In that Opinion, the Eleventh Circuit stated that the District Court had correctly found the Sophocleuses' claims to have been improperly filed in federal court and therefore, the Rooker-Feldman doctrine deprived the federal courts of jurisdiction over the Sophocleuses' claims. After filing their Petition for Writ of Certiorari to this Court, the Sophocleuses filed another lawsuit in Alabama state court against Reese & Howell making the same allegations as those in the now-dismissed federal court lawsuit.

This Court recognized in *Feldman* that federal circuit and district courts do not have jurisdiction to revisit a matter directly settled in prior state court litigation, and that those federal courts are also without jurisdiction to entertain a lawsuit which has at its heart, claims which are "inextricably intertwined" with the decision in a prior state court proceeding.

In his concurring opinion in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987), Justice Marshall described the appropriate standard to be followed in determining whether a federal court claim is "inextricably intertwined" with the previously-decided issues in an antecedent state court proceeding:

> It is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues presented to it.
>
> Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in

> substance, anything other than a prohibited appeal of the state-court judgment.

In order to have prevailed in their federal court lawsuit, the Sophocleuses would have to successfully prove "that the state court wrongly decided the issues presented to it." Their claims could only prevail if "the state court was wrong." That is precisely the situation to which this Court applied the Rooker-Feldman doctrine as stated in *Exxon Mobil*:

> The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: Cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Exxon Mobile Corp. v. Saudi Basic Ind. Corp., *supra* at 10.

The Sophocleuses attempt to state their claim in such a way as to circumvent the application of the Rooker-Feldman doctrine. The Sophocleuses do so by stating that the only issue in the state court condemnation proceeding was valuation. In that proceeding, the Sophocleuses attacked the State's right to condemn their property, and also raised the allegedly improper use of their property by Reese & Howell as the State's contractor for the highway expansion. The United States District Court for the Middle District of Alabama correctly held that under Rooker-Feldman the Sophocleuses could not recast these same claims in the form of a lawsuit for additional compensation for the period of

time that the Sophocleuses contend their property was used for private rather than public purposes. The United States Court of Appeals for the Eleventh Circuit properly affirmed that application of Rooker-Feldman on appeal.

The Sophocleuses were permitted to fully pursue in state court their claim that their property had not been validly taken for a public use, and they did so. Consequently, their subsequent federal lawsuit was properly dismissed through application of the Rooker-Feldman Doctrine.

The prior opinions of this Court which the Sophocleuses claim warrant granting of their Petition for Writ of Certiorari do not support their position. Both *Cincinnati v. Vester*, 281 U.S. 439 (1930) and *Thompson v. Consolidated Gas Corp.*, 300 U.S. 55 (1937) involved only federal court litigation. There had been no prior state proceedings relating to the subject matter of those federal court actions. *County of Allegheny v. Mashuda*, 360 U.S. 185 (1959), involved the same sort of situation to which this Court recently held in *Exxon Mobil* that Rooker-Feldman did not apply, *i.e.*, one in which a federal lawsuit is commenced while a state court lawsuit embracing the same subject is then pending. Unlike the respondents in *County of Allegheny v. Mashuda*, the Sophocleuses had already contended unsuccessfully in state court that the taking of their property had been for private use before their federal court lawsuit was filed. Rather than pursuing the state court action through the appeals process and perhaps ultimately to this Court, the Sophocleuses folded their tent, settled the state court litigation, then sought to undo it in federal court. That is

precisely the situation to which the Rooker-Feldman doctrine applies.[2]

CONCLUSION

As discussed in the preceding section of this Brief, the decision of the United States Court of Appeals for the Eleventh Circuit was a correct application of the Rooker-Feldman doctrine. Accordingly, this Court should deny the Sophocleuses' Petition for a Writ of Certiorari.

Respectfully submitted,

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[2] Interestingly, Mr. Justice Clark's dissent in *Court of Allegheny v. Mashuda*, characterizes the respondents' claim that their property was taken for private use as "obviously frivolous". *Id.* at 200, n. 1. The respondents had claimed that the state had abandoned its public taking of a portion of condemned property by leasing it to its contractor for use for "storage and concentration of supplies of the contractor in the performance of his duties under the contract with the . . . [respondents] for the improvement and enlargement of the Greater Pittsburgh Airport." The Sophocleuses' claim of wrongful private taking of their home by the State of Alabama in this case is based upon strikingly similar grounds. Specifically, at page eight of their Petition, the Sophocleuses contend that the state wrongfully allowed the temporary use of their home by Reese & Howell for sleeping quarters and an office in connection with the highway expansion project.